

# DIVERSITY OF THOUGHT: PROTECTING FREE SPEECH ON COLLEGE CAMPUSES

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## HEARING BEFORE THE SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT OF THE COMMITTEE ON EDUCATION AND THE WORKFORCE U.S. HOUSE OF REPRESENTATIVES ONE HUNDRED EIGHTEENTH CONGRESS FIRST SESSION

HEARING HELD IN WASHINGTON, DC, MARCH 29, 2023

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## **DIVERSITY OF THOUGHT: PROTECTING FREE SPEECH ON COLLEGE CAMPUSES**

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**Wednesday, March 29, 2023**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE  
DEVELOPMENT,  
COMMITTEE ON EDUCATION AND THE WORKFORCE,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:18 a.m., in Room 2175, Rayburn House Office Building, Hon. Burgess Owens [chairman of the subcommittee] presiding.

Present: Representatives Foxx, Thompson, Walberg, Grothman, Banks, Owens, Good, Kiley, Chavez-DeRemer, Houchin, Scott, Bonamici, Takano, and Manning.

Staff present: Cyrus Artz, Staff Director; Nick Barley, Deputy Communications Director; Jackson Berryman, Speechwriter; Hans Bjontegard, Legislative Assistant; Solomon Chen, Professional Staff Member; Christina Delmont-Small, Oversight Investigator; Tyler Dufrene, Research Assistant; Cate Dillon, Director of Operations; Daniel Fuenzalida, Staff Assistant; Sheila Havenner, Director of Information Technology; Amy Raaf Jones, Director of Education and Human Services Policy; Alex Knorr, Staff Assistant; Andrew Kuzy, Press Assistant; John Martin, Deputy Director of Workforce Policy/Counsel; Hannah Matesic, Deputy Staff Director; Audra McGeorge, Communications Director; Eli Mitchell, Legislative Assistant; Gabriella Pistone, Legislative Assistant Oversight; Ian Prince, Professional Staff Member; Mary Christina Riley, Professional Staff Member; Chance Russell, Professional Staff Member; Kent Talbert, Investigative Counsel; Brad Thomas, Senior Education Policy Advisor; Rashage Green, Minority Director of Education Policy; Christian Haines, Minority General Counsel; Amaris Benavidez, Professional Staff Member; Emanuel Kimble, Minority Education and the Workforce CBCF Fellow; Stephanie Lalle, Minority Communications Director; Kota Mizutani, Minority Deputy Communication Director; Karina Bravo, Minority Intern; Sam Varie, Minority Press Secretary.

Chairman OWENS. The Subcommittee on Higher Education and Workforce Development will come to order. I note that a quorum is present. Without objection, the Chair is authorized to call a recess at any time. The subcommittee is meeting today to hear testimony on Free Speech on College Campuses.

Good morning, everyone. Welcome to today's hearing. The hearing is titled Diversity of Thought: Protecting Free Speech on College Campuses. What our young men and women practice and

learn in colleges and universities will impact our Nation for generations to come, far beyond their careers.

How today's students are taught, or not taught, to listen to ideas and debate with those they disagree with will ultimately carry into their interactions and practice in Fortune 500 companies, in academia, the FBI, the arts, families, and even in the halls of Congress.

Freedom of speech is a constitutionally protected God given right enshrined in our founding documents. Far too many higher ed institutions claim to uphold this right, accept funding from American taxpayers, and then quickly turn their backs and betray us. Witnesses today will have extensive personal experience defending the rights for all viewpoints to be heard.

The experiences of our witnesses and growing mountains of evidence regularly appearing in the news paint a dark picture of the State of free expression in postsecondary education. The American people watched in shock at video after video emerge of mobs of radicalized students attacking anyone with an opinion not in line with theirs.

These students are trained in college classrooms that bullying of others is totally acceptable. That attacking others while hiding anonymously in the midst of a group, or behind a mask, is virtuous. This is not virtue, but instead the height of cowardice. These cowardly attacks extend to their fellow colleagues who feel they also have the right to express and debate their own beliefs.

To think to voice their own ideas beyond the confines of critical race theory, and most recently, and shockingly, the heckling of a Federal appellate judge who was invited to speak at a law school. Those who do not conform to the mob's thoughts and words are quickly taught you are not welcome here.

The ability to speak freely, to build one's knowledge is the cornerstone of the American system, and postsecondary education. When our universities do nothing to safeguard free speech from radicalized students, our future as a nation is at stake. I will leave the many appalling details of recent attacks on speech to our witnesses, but I would like to make one point.

Movements to threaten speech have occurred before. If those with certain views are allowed to shut down competing views, the battle to sustain freedom, upon which our country is founded, free speech, free thought, and free expression will be lost. In today's era, universities have latched on to an advancement of diversity, inequity and inclusion, DEI, as an ideal for campuses, which is plainly stamped on college websites, it is spelled out in college codes. While colleges and universities may choose to focus on DEI, I will caution them that the line is crossed when they obligate or demand faculty and students to sign on to these beliefs.

In fact, many universities require signed diversity statements, which often are a determining factor in student admission, faculty hiring, and tenure promotion. These statements act as political litmus tests. They insist on commitment to certain views, and imply the prospective applicant will not be considered if they do not sufficiently advocate for the same beliefs.

Let me remind everyone listening that we live in the free land of America, not Communist China, Cuba, North Korea or Russia.

While all the pressures to conform, or avoid saying the wrong thing, it is also no wonder over half the students now self-censor. Universities are increasingly minimizing the viewpoints of those beliefs deemed acceptable.

The entire generation of young academics must tailor their work to a prescribed agenda or face professional purgatory. Even professors with tenure are no longer safe in these elite leftist running universities as they continue to fire and threatened long-standing scholars over wrong thinking.

American postsecondary education thrives when people from different backgrounds are encouraged to express themselves to foster a healthy environment of intellectual diversity. The American university system needs to focus on the purpose of education. The purpose and pursuit of truth. This committee should explore legislative avenues to create the right incentives to remind universities of trust that we give them as we fund them through our taxpayer tax dollars.

This trust is not to be an adversary to our sacred free rights of speech, but to protect it. My colleagues and I have a delicate job of considering how to ensure compliance through enforcement mechanisms that our law currently lacks.

The role of American government has always been to defend the freedom of the students. This committee will not, and our fellow Americans should not look the other way as millions of students and great minds are silenced and disinvited, or forced to adopt beliefs antithetical to the Constitution because of a vocal minority of bullies.

With work, we can return to the days when students were taught to say with confidence let us respectfully agree to disagree, and let us continue this debate another day. With that, I look forward to the hearing today, and I yield to the Ranking Member, Mr. Scott.

[The statement of Chairman Owens follows:]

STATEMENT OF HON. BURGESS OWENS, CHAIRMAN, COMMITTEE ON EDUCATION AND THE WORKFORCE

What our young men and women practice and learn at colleges and universities will impact our nations for generations to come, far beyond their own careers. How today's students are taught or not taught to listen to new ideas and debate with those who they disagree with, will ultimately carry into their interactions and practices in Fortune 500 companies, academia, the arts, their families, and even into the halls of Congress. Freedom of speech is a constitutionally protected God-given Right enshrined in our founding documents. Far too many higher education institutions claim to uphold this right, accept funding from the American taxpayer, and then purposefully turn their backs and betray us.

Our witnesses today have extensive personal experience defending the right for all viewpoints to be heard.

The experiences of our witnesses and growing mountains of evidence regularly appearing in the news, paint a dire picture of the state of free expression in postsecondary education. The American people watch with shock as video after video emerge of mobs of radicalized students attacking anyone with an "opinion" not aligned with theirs. These students are trained in college classrooms that bullying of others is totally acceptable. That attacking others while hiding anonymously in the midst of a group or behind a mask is virtuous. This is not virtue, but instead the height of cowardice.

These cowardly attacks extend to their fellow colleagues who feel they have a right to express and debate their earnest beliefs, to faculty attempting to voice their own ideas beyond the confines of critical race theory, and most recently and shockingly, the heckling of a federal appellate judge who was invited to speak at a law school.

Those who do not conform to the mob's thoughts and words are quickly taught: "you are not welcome here."

The ability to speak freely to build one's knowledge is a cornerstone of the American system of postsecondary education. When our universities do nothing to safeguard free speech from classroom radicalized students, our future as a free Nation is at stake.

I will leave the many appalling details of recent attacks on speech to our witnesses, but I would like to make one more point.

Movements to threaten speech have occurred before. If those with certain views are allowed to shut down competing views, the battle to sustain freedoms upon which our country was founded—free speech, free thought, and free expression—will be lost.

In today's era, universities have latched onto the advancement of Diversity, Equity, and Inclusion (DEI) as an ideal for campuses, which is plainly stamped on college websites and spelled out in university codes.

While colleges and universities may choose to focus on DEI, I would caution that the line is crossed when they obligate and demand faculty and students to sign on to their belief in these principles.

In fact, many universities require signed "Diversity Statements," which are often a determining factor in student admissions, faculty hiring, and tenure promotion.

These statements act as a political litmus test. They insist on a commitment to certain views and imply that prospective applicants will not be considered if they do not sufficiently advocate for the same beliefs. Let me remind everyone listening. We live in the Free Land of America, not Communist China, Cuba, North Korea or Russia.

With all the pressure to conform or avoid saying the wrong thing, it is also no wonder that over half of students self-censor. Universities are increasingly minimizing the viewpoints of those with beliefs deemed unacceptable.

An entire generation of young academics must tailor their work to a prescribed agenda or face professional purgatory. Even professors with tenure are no longer safe as elite Leftist-run universities continue to fire and threaten long standing scholars over "wrong-think."

American postsecondary education thrives when people from different backgrounds and perspectives are encouraged to express themselves. To foster a healthy environment for intellectual diversity, the American university system needs to focus on the purpose of education: The pursuit of truth.

This committee should explore possible legislative avenues to create the right incentives to remind universities of the trust we give them when we fund them through our tax dollars. That trust is to not be an adversary to our sacred free speech rights but to protect it. My colleagues and I have the delicate job of considering how to ensure compliance through enforcement mechanisms that our law currently lacks.

The role of the American government has always been to defend the freedom of its citizens. This committee will not and our fellow Americans should not look the other way as millions of students and great minds are silenced, disinvited, or forced to adopt beliefs antithetical to the Constitution because of a vocal minority of bullies. We are working to return to the good ole days when our students were taught to say with confidence "Let's Respectfully Agree to Disagree" and continue to debate another day.

With that, I look forward to the hearing today and yield to the Ranking Member.

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Mr. SCOTT. Thank you, Chairman Owens. Good morning. We can all agree that free speech is a constitutional right, and the bedrock of our democracy. For decades, colleges and universities have been on the front lines of protecting and advancing that right.

The majority is not apparently interested in protecting all speech. Instead, today's hearing is an example of MAGA republicans hijacking our shared values of free speech, and waging a one-sided campaign to protect conservative speech. MAGA republicans and the far right news media are peddling empty catch phrases like cancel culture, and woke, to fuel mass hysteria around an alleged conspiracy by institutions to degrade conservative free speech.

This deliberately hides the real current threat to free speech on college campuses today, and that is republican politician's censorship of curriculum. For example, new laws in Mississippi, South Dakota, and Florida censor how public colleges can teach about racial justice. A new law in Tennessee bans public colleges from including ideas about race and sex in any seminar, training or workshop.

A new law in Florida proposed a ban on majors and minors related to race and gender, and intersectionality studies at public colleges. It also bans any initiative, such as bringing a speaker to a campus related to diversity, equity, and inclusion. It is particularly rich that today the committee republicans say they are concerned about diversity of thought and free speech, when just last week, House republicans passed legislation to ban books and censor curriculum in K through 12 schools, actions that are contrary to our core democratic principles.

I will say it again, the real threat to the First Amendment is MAGA republicans extreme education agenda. Regrettably, as republican leaders in red states increasingly censor your free speech and learning, the incidents of harassment toward marginalized student groups have also increased. In 2019, the Anti-Defamation League recorded 630 incidents of white supremacist activities on college campuses.

In other words, republican politicians are weaponizing the First Amendment to turn the clock back when our higher education system defends only conservative speech, and undermine support for students most in need.

When marginalized students, those who are reasonably fearful about their safety and security, when these marginalized students petition their college administrators for help, they are often met with inaction. The First Amendment is not an excuse for inaction. Our schools have duties under Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in any "program or activity receiving Federal financial assistance."

In fact, the Department of Education has illustrated how a college or university can live up to both its requirements under the First Amendment and under Title VI, saying and I quote, "The fact that discriminatory harassment involves speech, however, does not relieve the school of its obligation to respond if speech contributes to a hostile environment."

Schools can protect students from such harassment without running afoul of students and staff First Amendment rights. Simply put, we can uphold the Constitution while also protecting the safety of our students. While republican politicians waste valuable time in political theater and culture wars, democrats are continuing to build on the victories we have achieved alongside the Biden Harris administration to meaningfully support students and families.

For example, last Congress democrats passed, without a single republican vote, House or Senate, the American Rescue Plan Act, which provided institutions of higher education with dedicated funding to help students avoid hunger and homelessness and other hardships during the COVID-19 pandemic.

This Congress, the committee democrats have reintroduced the Lowering Obstacles to Achievement Now, the LOAN Act, which would help address gaps in our student loan system to reduce the need for students to take out crushing student loans, and support current and future borrowers.

I hope my colleagues will join democrats in addressing the real challenges facing students and families, and reject the republicans dangerous crusade against academic freedom. Thank you, Mr. Chairman. I yield back.[The statement of Ranking Member Scott follows:]

STATEMENT OF HON. ROBERT C. "BOBBY" SCOTT, RANKING MEMBER, SUBCOMMITTEE ON HIGHER EDUCATION AND WORKFORCE DEVELOPMENT

Thank you, Chairman Owens, and good morning.

We can all agree that free speech is a constitutional right and bedrock of our democracy. For decades, colleges and universities have been on the front lines of protecting and advancing that right.

The Majority is not interested in protecting all speech. Instead, today's hearing is an example of MAGA Republicans hijacking our shared value of free speech and waging a one-sided campaign to protect conservative speech.

MAGA Republicans and the far-right news media are peddling empty catch-phrases like "cancel culture" and "woke" to fuel mass hysteria around an alleged conspiracy by institutions to degrade conservative free speech.

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A new law in Tennessee bans public colleges from including ideas about race and sex in any seminar, training, or workshop.

A new Florida proposal would ban majors and minors related to race, gender, and intersectionality studies at public colleges. It also bans any initiatives—such as brining a speaker to campus—related to diversity, equity, or inclusion.

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I will say it again: the real threat to the First Amendment is MAGA Republicans' extreme education agenda.

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In other words, Republican politicians are weaponizing the First Amendment to turn back the clock on our higher education system, defend only conservative speech, and undermine support for the students who are most in need.

When these marginalized students—who are rightfully fearful about their safety and security—petition their college administrators for help, they are often met with inaction. The First Amendment is not an excuse for inaction.

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Simply put, we can uphold the Constitution while also protecting the safety of our students.

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I hope my colleagues will join Democrats in addressing the real challenges facing students and families and rejecting Republicans' dangerous crusade against academic freedom.

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Chairman OWENS. Thank you so much for that. Pursuant to Committee Rule 8(c), all members who wish to insert written statements into the record may do so by submitting them to the committee clerk electronically in Microsoft Word format by 5 p.m. 14 days after the date of this hearing, which is April 12, 2023.

Without objection, the hearing record will remain open for 14 days to allow such statements and other extraneous material referenced during the hearing to be submitted with the official record. I ask unanimous consent that the committee members who are not assigned to this subcommittee be permitted to participate in this hearing consistent with the committee rules and practice.

I will now turn to the introduction of our distinguished witnesses. Ms. Cherise Trump is Executive Director to Speech First, and is in the role as the host of Speech First podcast, Well Said. She brings extensive experience working directly with college students thanks to Speech First.

Mr. Josiah Joner is a sophomore studying economics at Stanford University. He is Executive Editor for the Stanford Review and has written on the various issues, including free speech on college campus.

Suzanne Nossel has been the Chief Executive Officer of PEN America since 2013, and is the author of Dare to Speak: Defending Free Speech for All.

Ilya Shapiro is currently servicing as Director of Constitutional Studies at the Manhattan Institute. He has served in previous roles of Vice President of Cato Institute, Director of Cato's Robert A. Levy Center for the Constitution Studies, and publisher of the Cato Supreme Court Review.

Thank you again for your time for coming to meet before us. We thank all the witnesses for being here, and look forward to your testimony. Pursuant to committee rules, I would ask that you each limit your oral presentation to a 5-minute summary of your written statement. I would also like to remind the witnesses to be aware of their responsibilities to provide accurate information to the subcommittee. I would like first to recognize Cherise Trump.

**STATEMENT OF CHERISE TRUMP, EXECUTIVE DIRECTOR,  
SPEECH FIRST, WASHINGTON, D.C.**

Ms. TRUMP. Thank you, Chairman Owens and Ranking Member Scott, and thank you members of the subcommittee for the opportunity to testify today. My name is Cherise Trump. I am the Executive Director of Speech First, a free speech advocacy organization that has successfully sued colleges over their anti-speech policies and won.

Over the past year alone, I have visited dozens of campuses and spoken with thousands of students. Those students face an ever-growing, ever-present threat on campuses. That is administrators working to chill and silence their speech.

Our universities are failing miserably at the one thing they are being paid exorbitant amounts to do. They are failing to educate students. Last week, I was on one of North Carolina's university campuses, and there was a room of about 50 students, and I asked them to raise their hand if they read the Constitution, and only five raised their hands.

This is something that is evident, that the universities are failing our students. I will quickly mention two policies that are being used to target and squash unpopular speech on campuses. First are harassment policies. We all know that Title 9 regulates discrimination on the basis of sex and education, but you may not realize that there is no limit to how many harassment policies and discrimination policies can actually exist on campus.

Often times universities have multiple. They take it upon themselves to adopt even broader definitions of harassment and discrimination. These policies completely disregard the Federal guidelines that are meant to strike a balance between protecting student's First Amendment rights, while also protecting students.

For example, we have seen universities define in harassment offensive speech, something that threatens someone's mental health. Statements that might be humiliating or micro aggressions.

These are all Constitutionally protected forms of speech. I ask you, can you define what threatens someone's mental health? Can you provide an objective standard for evaluating whether a statement is humiliating? Can you actually define a micro aggression? Students can not either. How can one expect to enforce a policy that uses such subjective and overbroad terms?

Second, and perhaps even more nefarious are biased reporting systems. Bias reporting systems are anonymous reporting systems that solicit reports from students on one another for incidents of bias. Bias can be defined as anything the university wants. Often times they define a bias incident as statements that are unfair or prejudicial.

Jokes, stereotyping, micro aggressions, not using gender inclusive language. In some cases, even offending someone's political affiliation is a reportable offense. Once a student is reported, they often do not get to face their accuser. They are asked to meet with a member of the administration, which can often lead to writing a letter of apology and sensitivity training.

Government agencies soliciting anonymous reports from citizens that lead to re-education. What does this sound like? In 2022, Speech First surveyed 821 public and private universities, and it found that 56 percent had biased reporting systems in place. This is a 200 percent increase over the last 5 years.

Our lawsuits at Speech First challenge the university policies that target and discipline students for their constitutionally protected speech. The First Amendment should be the guide that universities use when deciding whether and how to regulate student speech.



It is not. Universities, instead try to find ways to target and suppress uncomfortable speech. Their stated goals are diversity and inclusion, safety, and other euphemisms for discrimination. It seems the term diversity applies to everything except for diversity of thought.

Currently, diversity, equity and inclusion permeates every aspect of a college experience. In 2022, Speech First obtained freshman orientation materials from almost every major State university. Only one-third of the universities even mentioned free speech or viewpoint diversity in their orientation materials. This emphasis on DEI and freshman orientations is not an oversight. It is intentional, and it is clearly designed to create insecurities where there were none before.

Take for example, the definition of racism that administrators at UNLV gave the students. Racism, they say, is, "A socially constructed racial hierarchy that privileges white people." This is something that is very clear to what the universities are prioritizing. In short, students are operating in a surveillance-like state. They are actively censoring themselves, out of fear of espousing the "wrong" opinions.

They do not know what could be reported for, so they choose to stay silent. Thankfully the law is on our side. Speech First has one in the Fifth, Sixth and 11th Circuits on issue of biased reporting systems, and in the Fifth and 11th Circuits on harassment policies. All of the policies I have mentioned today are designed to create an environment of control, not safety.

I can give you plenty of examples of students who currently feel unsafe on college campuses because of these anti-speech and discriminatory environments that are encouraged by the policies that I outlined today. Keep in mind these are the same students who will be future leaders, litigators, judges, national security advisers, and tech CEOs and bankers.

What outlooks and habits are they developing on college campuses that they will bring with them in the professional world. Will we end up with leaders who are either disconcertingly compliant, and avoid confrontation, or leaders who have totalitarian penchants, encouraged by all those who agree with them?

Thank you for your time, and I look forward to your questions.  
[The prepared statement of Cherise Trump follows:]



# SPEECH FIRST

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## CONGRESSIONAL TESTIMONY

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### "DIVERSITY OF THOUGHT: PROTECTING FREE SPEECH ON COLLEGE CAMPUSES"

#### Testimony before

Education & the Workforce Committee  
Higher Education and Workforce Development Subcommittee

United States House of Representatives

March 29, 2023

#### **Cherise Trump**

Executive Director  
Speech First

Thank you Chairman Owens and Ranking Member Wilson, and thank you members of the subcommittee for the opportunity to testify today.

My name is Cherise Trump. I'm the Executive Director of Speech First, a free speech advocacy organization that has successfully sued colleges over their anti-speech policies and won. No, I'm not related to the former President but according to some colleges my last name poses an "elevated risk."<sup>1</sup> Over the past year alone, I have visited dozens of campuses and spoken with thousands of students. Those students face an ever-growing, ever-present threat on campuses: universities working with the Biden Administration<sup>2</sup> and activists<sup>3</sup> to chill and silence student speech.

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<sup>1</sup> Aaron Sibarium, Her Name Is Trump. That Makes Her An 'Elevated Risk', According To Trinity University, February 28, 2023 at Washington Free Beacon, <https://freebeacon.com/campus/her-name-is-trump-that-makes-her-an-elevated-risk-according-to-trinity-university/>

<sup>2</sup> <https://www.dailysignal.com/2022/07/29/dojs-partisan-shell-game-raises-ethics-issues-about-pamela-karlan/>

<sup>3</sup> <https://www.nationalreview.com/bench-memos/stanford-audio-vindicates-duncan-stanford-hides-video/>

Across the nation, many universities have implemented policies that supposedly “protect” students. While claiming they’re “protecting” students, what they’re really doing is trampling on other students’ rights. Public universities have no excuse for violating the law. And while private universities operate within different legal parameters, they also have no excuse for failing to uphold students’ First Amendment rights that they so often promise to champion. They have virtually unlimited resources, in-house counsel, and in some cases, more administrators than professors. With all of these “highly educated” individuals on campus, one would hope colleges have at least a basic understanding of the U.S. Constitution, and in this case, the First Amendment. The university campus is no stranger to free speech; historically the university campus was the arbiter of free expression. But it is clear today that those calls for free speech were really only calls for particular viewpoints.

Our lawsuits at Speech First challenge university policies that target, investigate, and discipline students for their constitutionally protected speech. The First Amendment should be the guide that universities use when deciding whether and how to regulate student speech. But it isn’t. Universities instead try to find ways to target and suppress uncomfortable speech. Their stated goals are diversity, inclusion, safety, and other euphemisms. But it seems the term “diversity” applies to everything except thought.

I was on a campus in North Carolina last week speaking to a room of about 50 students. And when I asked if any had been required to, or on their own had read, the U.S. Constitution before entering college, only 5 raised their hands. It is no wonder why students fail to grasp such basic concepts like the freedom of speech. Even law students either don’t get it (or don’t want to get it), as recent events at Stanford Law School revealed.

You often hear students claim they are exercising their free speech rights by shouting down a speaker. Not quite. There can be no right to block someone else’s right to speak, for obvious reasons.

Our universities are failing miserably at the one thing they are being paid exorbitant amounts to do. They are failing to educate students. Universities should be challenging students intellectually and driving them to seek truth. But in order to seek truth, one must engage in the ‘robust exchange of ideas’—a concept that has been lost on students but that wasn’t lost on our Founders. When students are exposed to different and challenging ideas, they emerge stronger, smarter, and more resilient. Intellectual growth is not something that happens in a vacuum; students must be able to express their ideas and opinions on political and social issues in order to exercise the critical thinking process that is so vital to intellectual development.

Currently, Diversity, Equity, and Inclusion (DEI) permeates every aspect of the college experience: from freshman orientation to graduation. In 2022 Speech First obtained freshman orientation materials from almost every major state university. Only one third of the materials mentioned free speech or viewpoint diversity, while over 90% discussed diversity, equity, and inclusion. Among those that did mention free speech, it was still a 7 to 1 ratio of DEI topics to free speech/viewpoint diversity; if mentioned at all, it was only in passing, emphasizing to students even more that free speech and the respect for opposing viewpoints is merely a footnote

to DEI.<sup>4</sup> Of the DEI topics emphasized in orientations, around 23% of the materials focused on “DEI training” which is often run by a third party company that specializes in this subject matter and can be described as “sensitivity training”. 9% discussed anti-racism, 10% racial equity, 9% microaggressions, 20% discrimination, 2% trigger warnings, and 27% discussed implicit bias.<sup>5</sup>

Our findings show that new student orientation programs exclusively steep students in all things DEI, while leaving out fundamental principles like free speech and viewpoint diversity. Students begin their college careers being told they are implicitly biased against certain races and ethnicities, and that they are privileged if they look a certain way. They are told that no matter where they came from or what their background is, they have an inherent bias that they must focus on rectifying. In some cases, students are made to take “implicit bias tests” that ask them to match skin color with positive and negative words and if they click too fast they will be told they are “implicitly bias”—in other words, racist.

This puts an undue burden on the students’ shoulders as they enter what is supposed to be the most rigorous and studious time in their lives. And instead of focusing on their studies, their ideas, and challenging others’ ideas, they must walk on eggshells, avoid upsetting anyone with simple questions, and focus on correcting a nonexistent bias that creates a sense of enmity amongst students rather than camaraderie.

This emphasis on DEI in freshman orientations is not an oversight; it is intentional, and it is clearly designed to create insecurities where there were none before. Take, for example, the definition of “racism” that administrators at UNLV gave to students: racism, they say, is a “socially constructed racial hierarchy that privileges white people.”<sup>6</sup> Pure identity politics, on day one after arriving on campus.

Students are at the mercy of the bloated bureaucratic behemoth that is the modern university. These armies of administrators would rather convince students that the world is a place that must cater to their personal preferences, and that the truth doesn’t matter unless it’s *your* truth. If you wonder why rioting against ideas that make students uncomfortable is becoming the norm, I urge you to look at university leadership. They’re the ones setting expectations. And they’re the ones creating policies that encourage students to snitch on one another for offensive jokes and microaggressions.

I would like to emphasize two of the many policies that we are seeing more and more on campuses. These policies are specifically designed to squash speech that dissents from the prevailing dogma on campus.

First are harassment policies. We all know that Title IX regulates discrimination on the basis of sex in education. But what you may not realize is that there is no limit on how many harassment

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<sup>4</sup> Speech First, Freshman Disorientation Report, 2022, [http://speechfirst.org/wp-content/uploads/2022/08/SF\\_Freshman-Disorientation-Report\\_FINAL.pdf](http://speechfirst.org/wp-content/uploads/2022/08/SF_Freshman-Disorientation-Report_FINAL.pdf)

<sup>5</sup> Ibid.

<sup>6</sup> Speech First, Freshman Disorientation Report, 2022, [http://speechfirst.org/wp-content/uploads/2022/08/SF\\_Freshman-Disorientation-Report\\_FINAL.pdf](http://speechfirst.org/wp-content/uploads/2022/08/SF_Freshman-Disorientation-Report_FINAL.pdf)

and discrimination policies can exist on campuses. Oftentimes, universities have many. In addition to all the federal restrictions on harassment and discrimination, many universities take it upon themselves to adopt even broader definitions of harassment and discrimination. These policies completely disregard the federal guidelines that are meant to strike a balance between protecting students' First Amendment rights while also protecting students. And so the policies outright target constitutionally protected speech. For example, before we sued it, the University of Houston<sup>7</sup> defined harassment to include negative stereotyping, denigrating jokes, and anything that creates an environment that alters conditions of learning. Currently Oklahoma State University<sup>8</sup> says that harassment can be anything that threatens or endangers someone's mental health. And the University of Central Florida<sup>9</sup> once listed examples of discriminatory harassment that included name-calling, verbal acts, and written statements that may be humiliating.

THESE ARE ALL CONSTITUTIONALLY PROTECTED FORMS OF SPEECH. Whether you find someone's speech appalling, uncomfortable, or offensive, the Supreme Court has held time and time again, even as recently as 2019,<sup>10</sup> that there is no hate or offensive speech exception to the First Amendment. Universities are weaponizing harassment policies to target and restrict student speech.

Secondly, and perhaps even more nefarious, are Bias Reporting Systems. BRSs are anonymous reporting systems that solicit reports from students on one another for incidents of "Bias". "Bias" can be defined as anything the university wants. Oftentimes, they define a "bias incident" as "offensive or unwanted speech", "jokes", stereotyping, "microaggressions", and "hate speech". In some cases, even offending someone's political affiliation is a reportable offense. Universities often state that these policies are enforceable anytime, anyplace, and by any medium. This includes social media.

Once a student is reported, they often do not get to face their accuser. They are asked to meet with a member of the administration. Once in the meeting, the student might be asked to write a letter of apology, attend DEI training, or see a counselor.

But the mere intimidation factor associated with being reported, tracked, and called into the office is already a violation of the students' First Amendment rights.

Government agencies, soliciting anonymous reports from citizens that lead to re-education. What does this sound like?

BRSs intimidate and silence students whose viewpoints do not conform to the dominant social, political, and cultural narratives on campus. By design, these teams create an environment of fear that chills speech and dialogue between students of diverse viewpoints, ultimately silencing speech through self-censorship.

<sup>7</sup> <https://speechfirst.org/case/university-of-houston/>

<sup>8</sup> <https://speechfirst.org/case/oklahoma-state-university/>

<sup>9</sup> <https://speechfirst.org/case/university-of-central-florida/>

<sup>10</sup> "Iancu v. Brunetti." *Oyez*, [www.oyez.org/cases/2018/18-302](http://www.oyez.org/cases/2018/18-302)

Even scarier, many students are using them! On many campuses, students know about these policies and have shown a propensity to use them against their fellow students or professors they disagree with. Professors, too, have used BRSs to report comments made by their own students in academic setting. Many students choose not to engage in class discussions or certain types of political conversations because they know these types of reporting entities exist at their institutions.

In 2022, Speech First surveyed 821 public and private institutions and found that 56%<sup>11</sup> had a BRS or similar system in place and nearly all of them allowed for anonymous reporting. That is a 200% increase over the past five years. Furthermore, 53% of the most egregious forms of BRSs were housed in Diversity, Equity, and Inclusion offices.<sup>12</sup>

I pose these questions to the committee: can you define speech that can endanger someone's mental health? Can you provide an objective standard for evaluating whether a statement is "humiliating"? And while you're at it, can you define a "microaggression" and list some examples? Because we have seen freshman orientation materials that tell new students that microaggressions can be as innocuous as asking someone where they are from.<sup>13</sup> How can one expect to enforce a policy when definitions use entirely subjective and broad terms?

In short, students are operating in a surveillance-like state. Accordingly, they are actively censoring themselves out of fear of espousing the "wrong" opinions. They fear repercussions for anything they say. Moreover, when speech codes are purposely written to open the door to punishing any speech that a listener finds subjectively offensive, students genuinely have no idea what they can and can't say. These vague standards only embolden campus activists. When anything and everything can be "offensive" speech, what's to stop students from wielding the current policies against classmates with unpopular opinions?

These institutional endorsements to shut down dissenting ideas has not only emboldened activist-minded students but have also encouraged administrators and non-campus activists of the same ilk.

Just this past week a Pennsylvania lawmaker, La'Tasha Mayes made a veiled threat<sup>14</sup> towards the University of Pittsburgh that the university's funding could be at risk if the university did not cancel events featuring conservative commentators like Michael Knowles.

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<sup>11</sup> Speech First, Free Speech in the Crosshairs: Bias Reporting on College Campuses, 2022, [https://speechfirst.org/wp-content/uploads/2022/04/Free-Speech-in-the-Crosshairs\\_BRS-Report.pdf](https://speechfirst.org/wp-content/uploads/2022/04/Free-Speech-in-the-Crosshairs_BRS-Report.pdf)

<sup>12</sup> By "most egregious" we mean a more formalized version of BRSs that make up administrative teams explicitly devoted to the solicitation and review of bias incident reports by a designated team of cross-departmental members, university administrators, and often campus security or law enforcement.

<sup>13</sup> Speech First, Freshman Disorientation Report, 2022, [http://speechfirst.org/wp-content/uploads/2022/08/SF\\_Freshman-Disorientation-Report\\_FINAL.pdf](http://speechfirst.org/wp-content/uploads/2022/08/SF_Freshman-Disorientation-Report_FINAL.pdf)

<sup>14</sup> Aaron Sibarium, <https://freebeacon.com/democrats/pennsylvania-dem-threatens-to-withhold-funding-from-university-of-pittsburgh-over-conservative-speakers/>

Recently, at UC Davis, Charlie Kirk was met with violent protests and property damage<sup>15</sup> because of a fabricated lie that he advocated violence against transgender people spread by the university's own Chancellor.<sup>16</sup>

Stanford law school students completely lost their heads when guest, Judge Kyle Duncan was invited to campus. He was shouted down simply for espousing conservative legal opinions. The law school's DEI dean even claimed during her remarks aimed at Judge Duncan that the students were enrolled in law school to learn advocacy skills. Tellingly, she ignored the primary purpose of law schools, which is to teach students about the law.<sup>17</sup>

What's interesting is that it seems speakers under the most threat are not lawmakers or politicians, but podcast pundits like Ben Shapiro who spent \$600,000 in security to protect himself from the mobs at UC Berkeley.<sup>18</sup> It is the spread of ideas that is being shut down, not just a disagreement with policies. Podcasters don't pass policies into law, yet the spread of their ideas is more targeted by the mob than anyone else.

Why are universities so worried about their students being exposed to alternative viewpoints? Are they afraid students might change their minds? Pull away from the political agendas so many administrators and professors promulgate? Doesn't this alone show the dark path we are headed down as a society?

There is hope though, Speech First has shown that the law is on our side. We have successfully challenged Bias Reporting Systems at the University of Texas, the University of Michigan, and the University of Central Florida, all three schools changed or disbanded their systems. Through litigation, these unconstitutional policies can be fought and won. In *Speech First, Inc. v. Femves*, the majority opinion said that Bias Reporting Systems represent "the clenched fist in the velvet glove of student speech regulation."<sup>19</sup>

Speech First has been around for five years and we have won in the Fifth, Sixth, and Eleventh Circuits on the issue of Bias Reporting Systems and the issue is primed for Supreme Court review. We have also won in the Fifth and Eleventh Circuits on the harassment policy issue. We currently have active lawsuits against Oklahoma State University in the Western District of Oklahoma, and Virginia Tech in the Fourth Circuit Court of Appeals.

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<sup>15</sup> Two Arrested, One Officer Injured As Protesters Damage Property Ahead Of Charlie Kirk Event At California University, <https://www.dailywire.com/news/two-arrested-one-officer-injured-as-protesters-damage-property-ahead-of-charlie-kirk-event-at-california-university>

<sup>16</sup> UC Davis Chancellor Gary S. May Comments on March 14 Student-led Event <https://www.youtube.com/watch?v=rz3k-FnPPJM>

<sup>17</sup> "Dogs—t": Federal Judge Decries Disruption of His Remarks by Stanford Law Students and Calls for Termination of the Stanford Dean Who Joined the Mob. <https://freebeacon.com/campus/dogshit-federal-judge-decries-disruption-of-his-remarks-by-stanford-law-students-and-calls-for-termination-of-the-stanford-dean-who-joined-the-protesters/>

<sup>18</sup> Ben Shapiro's visit cost UC Berkeley an estimated \$600k for security. <https://www.dailycal.org/2017/09/17/uc-berkeley-security-costs-ben-shapiros-visit-estimated-600k>

<sup>19</sup> <https://speechfirst.org/wp-content/uploads/2020/10/UT-opinion.pdf>

In *Speech First v. Cartwright, et al.*, Judge Kevin Newsom of the Eleventh Circuit wrote:

“Colleges and universities serve as the founts of—and the testing grounds for—new ideas. Their chief mission is to equip students to examine arguments critically and, perhaps even more importantly, to prepare young citizens to participate in the civic and political life of our democratic republic.”<sup>20</sup>

And Judge Marcus wrote in his concurring opinion:

“History provides us with ample warning of those times and places when colleges and universities have stopped pursuing truth and have instead turned themselves into cathedrals for the worship of certain dogma. By depriving itself of academic institutions that pursue truth over any other concern, a society risks falling into the abyss of ignorance...” A university that turns itself into an asylum from controversy has ceased to be a university; it has just become an asylum.”<sup>21</sup>

These successes bring hope, but many of the future leaders of America are still developing skewed and inaccurate views of our First Amendment rights and the laws around free speech.

Higher education seems to be the testing ground for various forms of censorship policies that instill fear, propel viewpoint discrimination, and restrict vital academic discourse. “Free speech” zones, restricting email correspondence, restricting the use of certain words, asking students to become informants, weaponizing harassment policies to target speech, and now in addition to restricting speech, this administration wants to compel speech as well. In May, the Biden Administration and his Department of Education will implement rule changes to Title IX, including the removal of the *Davis* standard. This will leave students open to being reported under Title IX for simply not using someone’s “preferred” pronouns.<sup>22</sup> As stated, this is compelled speech. And with students developing a taste for reporting on one another, what does this mean for the coming fall semester on campuses across the country?

All of the policies I have mentioned today are designed to create an environment of control not safety. Students are increasingly choosing security over freedom; preferring comfort over the growing pains of intellectualism and the risks of engaging in the battle of ideas. These are the same students who will be future leaders, litigators, judges, national security advisors, tech CEOs, bankers... what outlooks and habits are they developing on college campuses that they will bring with them in the professional world? We will end up with leaders who are either disconcertingly compliant and avoid confrontation, or leaders who have totalitarian penchants encouraged by all those who agree with them.

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<sup>20</sup> <https://speechfirst.org/wp-content/uploads/2021/02/UCF-Op-2.pdf>

<sup>21</sup> *Ibid.*

<sup>22</sup> <https://www.theamericanconservative.com/biden-and-universities-launch-sneak-attack-on-free-speech/>



Chairman OWENS. Thank you so much, Ms. Trump. I would like to next recognize Josiah Joner.

**STATEMENT OF MR. JOSIAH JONER, EXECUTIVE EDITOR, THE STANFORD REVIEW, STANFORD, CALIFORNIA**

Mr. JONER. Chairman Owens, Ranking Member Scott, and members of the subcommittee. Thank you for inviting me here today to share my perspective as a college student on free speech in our universities.

My name is Josiah Joner. I am a sophomore at Stanford University, and I am an editor at the Stanford Review. There are countless examples from college campuses across the country where students and administrators have suppressed free speech on campuses. Recently, protestors and a high-ranking administrator at Stanford Law School prevented Judge Kyle Duncan from speaking.

I covered this incident with my colleagues in the Stanford Review. These are the institutions currently educating the next generation of world leaders, and without a basic respect for free speech on college campuses, the integrity of both these institutions and the future leaders will slowly degrade.

Unfortunately, these incidents that suppress free speech have become an all too common occurrence on college campuses. On Thursday, March 9, Judge Kyle Duncan of the Fifth Circuit Court of Appeals was invited to speak at Stanford Law School by the Stanford Federalist Society. Days before the event, however, the protesting students asked the Federalist Society to cancel the event, or move it to an online format because of their concerns with Judge Duncan's previous statements and actions.

These students posted fliers that condemned Judge Duncan and called out the individual members of the Federalist Society's Board, saying that they should be ashamed. Then, on the day of Judge Duncan's Stanford speech, close to 100 students protested Judge Duncan, proceeding to enter the event and shout at him during his remarks.

The student protestors heckled Judge Duncan profusely, preventing the judge from speaking in what was one of the latest examples of the heckler's veto, used to suppress free speech on our campus. They held obscene signs, and shouted obscene remarks, and Judge Duncan was not able to deliver his lecture.

While the protests were led by dozens of students, at the center of the incident was a university administrator. Stanford Law School's Associate Dean for Diversity, Equity and Inclusion. Frustrated with the disruptive students, Judge Duncan asked for an administrator to hopefully restore normalcy to the room and allow him to speak.

After his request for an administrator, Dean Tirien Steinbach stepped up to the podium and pulled out her prepared remarks. In a 6-minute speech, Dean Steinbach spoke freely, without students heckling her speech. Dean Steinbach began by condemning Judge Duncan's harmful viewpoints. Calling him out for his stances that she disagrees with.

In her speech, the Dean affirmed her supposed commitment to free speech, but she then continued to contradict her own words, looking out to the crowd of protestors, those who were holding ob-

scene signs and heckling the judge. Dean Steinbach said, "I look out and I do not ask what is going on here. I look out and I say I am glad this is going on here."

Dean Steinbach condoned and encouraged the protests that silenced Judge Duncan, and her speech was met with applause from the protestors at the end. Federal Marshals had to step in and escort Judge Duncan from the event, and he was effectively prevented from exercising his freedom of speech under both the First Amendment and Stanford's own policies.

The incident at Stanford Law School is a very concerning example of students destroying a speaker's right to share their beliefs on campus. However, most concerning from this incident was the active role of a university administrator in violating Judge Duncan's free speech. The incident demonstrates a concerning trend in colleges, the hiring of administrators who are not committed to the principles of free speech, or even the university's own policies regarding free speech.

Many of these university administrators, like Dean Steinbach, a diversity, equity and inclusion administrator, have taken a role in universities that places a greater emphasis on restricting what is and what is not acceptable, rather than promoting diversity of thought and free speech, which spurs a functioning society, and rigorous intellectual debate.

It is because of incidents like this, and administrators like Dean Steinbach, that students, both conservative and liberal at Stanford and college campuses around the country, are too scared to speak up in the classroom and share their viewpoints. It has instilled angst into each student for fear of sharing their opinions.

Anything they say might also be viciously condemned by these same university administrators. The best option is to merely stay silent and keep one's opinions to themselves. While these administrators claim to create more open and inclusive environments, they are in fact contributing to just the opposite. A culture which signals conformity and destroys academic debate because of fear of sharing one's opinions.

Debate has been expelled from the classroom and forced to die altogether, or take refuge in a few remaining groups that still offer forums for open and free discussion. We at the Stanford Review are one of those few groups on campus still dedicated to the principle of free speech, and rigorous intellectual debate. We are concerned over the precedent this sets for Stanford and other colleges across the country.

This environment has exiled free expression and debate outside of the classroom. The very spot where it is most needed and essential. It is my hope that future students, that our colleges do not continue to experience the degradation of free speech, and face the threats that may come with sharing their opinions. This is not a conservative issue, and this is not a liberal issue.

This issue of free speech is at the core of what defines our society in the United States, and without it, these institutions will fail. Congress now has an opportunity to ensure our institutions preserve First Amendment rights and protect free speech on college campuses. Thank you.

[The prepared statement of Mr. Joner follows:]

**Testimony before the United States House of Representatives  
Higher Education and Workforce Development Subcommittee of the  
House Committee on Education & the Workforce:  
“Diversity of Thought: Protecting Free Speech on College Campuses”**

Josiah Joner

Executive Editor, *The Stanford Review*

Stanford University Class of 2025

March 29, 2023

## Introduction

Colleges and universities have always been the bedrock institutions designed to equip and educate the next generation dedicated to rigorous intellectual thought and the pursuit of knowledge. Yet, despite the growing proportion of students with access to college, our institutions have become so ingrained in ideological capture that they have strayed from their essential mission to educate the next generation of leaders dedicated to our country's founding principles. It is essential that Congress take steps to ensure that college campuses maintain basic standards of free speech in order to preserve the integrity of our institutions and uphold and protect the First Amendment.

There are countless examples from college campuses across the country, where students and administrators have suppressed free speech on campuses. Recently, protestors and a high-ranking administrator at Stanford Law School prevented Judge Kyle Duncan from speaking, employing tactics contrary to the basic principle of free speech and the university's own policies. I covered this incident with my colleagues in *The Stanford Review*.<sup>1</sup> These are the institutions currently educating the next generation of world leaders, and, without a basic respect for free speech on college campuses, the integrity of both these institutions and these future leaders will slowly degrade.

Controversial speakers are routinely met with intense protests and backlash. But while protests and backlash are entirely acceptable, the suppression of free speech through violent protests, "heckler's vetoes," and other intimidation methods that shut down another's speech, are entirely unacceptable. Unfortunately, these incidents have become an all-too-common

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<sup>1</sup> Joner, Josiah, Thomas Adamo, and Walker Stewart. "Fire Tirien Steinbach." *The Stanford Review*, March 13, 2023, <https://stanfordreview.org/fire-tirien-steinbach/>.

occurrence on college campuses. They are contrary to the core principles of the Constitution, which were designed to catalyze intellectual thought and guide the pursuit of truth. Furthermore, this suppression of speech on college campuses has contributed to a culture that has destroyed intellectual debate in the classroom. For both conservative and liberal students, these attacks on free speech have created a culture of fear for sharing one's opinions.

Universities either lack the systems in place, or the willingness, to guarantee that the basic principle of free speech is respected and upheld on college campuses, and it is evident through the repeated and routine violations of free speech on college campuses. It is essential that Congress work to ensure that these campuses maintain standards of free speech in order to preserve and uphold the First Amendment. Without it, the promise of a rigorous American postsecondary education and the opportunities that follow for students, like me, will diminish as our institutions will no longer be marketplaces of ideas.

### **Incident at Stanford Law School**

On Thursday, March 9, Judge Kyle Duncan of the Fifth Circuit Court of Appeals was invited to speak at Stanford Law School by the Stanford Federalist Society.<sup>2</sup> We at *The Stanford Review* were quick to cover this incident and call on Stanford to remove the dean who actively defied the university's own policy on free speech. When other outlets may not adequately cover the whole story or discuss ideas openly, we will share the student perspective and call on the university to make needed changes. In this incident, we knew many of the law students involved

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<sup>2</sup> Aaron Sibarium. "Dogs-T: Federal Judge Decries Disruption of His Remarks by Stanford Law Students and Calls for Termination of the Stanford Dean Who Joined the Mob." *The Washington Free Beacon*, March 12, 2023, <https://freebeacon.com/campus/dogshit-federal-judge-decries-disruption-of-his-remarks-by-stanford-law-students-and-calls-for-termination-of-the-stanford-dean-who-joined-the-protesters/>.

and aimed to highlight the violations of these basic rights and discuss the needed steps to protect them.

Judge Duncan's scheduled talk was titled "The Fifth Circuit in Conversation with the Supreme Court: Covid, Guns, and Twitter."<sup>3</sup> Days before the event, however, protesting students asked the Federalist Society to cancel the event or move it to an online format because of their concerns with Judge Duncan's previous statements and actions. These students posted flyers that condemned Judge Duncan and called out the individual members of the Federalist Society's board, saying that they should be "ashamed" for inviting Judge Duncan. One of those disagreements that fueled the protestors was Judge Duncan's refusal to address a convicted pedophile by his preferred pronouns in a courtroom.<sup>4</sup> Then, on the day of Judge Duncan's Stanford speech, close to one hundred students protested Judge Duncan, proceeding to enter the event and shout at him during his remarks. The student protestors heckled Judge Duncan profusely, preventing the judge from speaking, in what was one of the latest examples of the "heckler's veto" used to suppress free speech on campus. They held obscene signs and shouted obscene remarks, and Judge Duncan was not able to deliver his lecture. While the protests were led by dozens of students, at the center of the incident was a university administrator: Stanford Law School's Associate Dean for Diversity, Equity and Inclusion.

Frustrated with the disruptive students, Judge Duncan asked for an administrator to hopefully restore normalcy to the room and allow him to speak. After his request for an administrator, Dean Tirien Steinbach stepped up to the podium and pulled out her prepared remarks. In a six-minute speech, Dean Steinbach spoke freely—without students heckling her

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<sup>3</sup> "The Fifth Circuit in Conversation with the Supreme Court: Covid, Guns, and Twitter." Stanford Law School Events. Accessed March 24, 2023, <https://law.stanford.edu/event/lunch-with-judge-duncan/>.

<sup>4</sup> *United States of America v. Norman Varner* (The United States Court of Appeals for the Fifth Circuit, January 15, 2020), 1, <https://www.ca5.uscourts.gov/opinions/pub/19/19-40016-CR0.pdf>.

speech.<sup>5</sup> This time, when Judge Duncan tried to interject, the students screamed “let her finish!” Dean Steinbach began by condemning Judge Duncan’s “harmful” viewpoints, calling him out for his stances that she disagrees with. She then infamously asked: “Is the juice worth the squeeze?,” asking whether Judge Duncan’s remarks were worth the division that his presence caused. In her speech, the dean affirmed her supposed commitment to free speech. She said, “I really do wholeheartedly welcome you, because me, and many people in this administration, do absolutely believe in free speech,” yet she also sympathized with the movement to change free speech policies because of the “great harm” that it causes. She then continued to contradict her own words. Looking out to the crowd of protesters, those who were holding obscene signs and heckling the judge, Dean Steinbach said, “I look out and I don’t ask ‘what is going on here?’ I look out and I say, ‘I’m glad this is going on here.’” Dean Steinbach contradicted not only her own commitment to free speech but failed to uphold Stanford’s own policies.<sup>6</sup> Instead, she condoned and encouraged the protests that silenced Judge Duncan. Her speech was met with applause from the protestors at the end, and it did not allow for Judge Duncan to properly carry on with the conversation he intended to have with the Federalist Society chapter at Stanford. Federal marshals had to step in and escort Judge Duncan from the event, and Judge Duncan was effectively prevented from exercising his freedom of speech under both the First Amendment and Stanford’s policies.

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<sup>5</sup> Ethics and Public Policy Center, “Judge Duncan event at Stanford,” uploaded March 10, 2023, <https://vimeo.com/806801455?ref=stanfordreview.org>.

<sup>6</sup> “Freedom of Speech and the Fundamental Standard,” Stanford University, accessed March 24, 2023, <https://communitystandards.stanford.edu/resources/additional-resources/freedom-speech-fundamental-standard>

**Protecting Free Speech: Next Steps**

The incident at Stanford Law School is a very concerning example of students destroying a speaker's right to share their beliefs on campus. However, most concerning from this incident, was the active role of a university administrator in violating Judge Duncan's free speech and their deliberate actions to not uphold his right to speak or control the protestors. The dean did not carry out her duties as a university administrator to uphold Stanford's policies, and her actions only fueled the protestors' disruptive behavior. The incident demonstrates a concerning trend in colleges: the hiring of administrators who are not committed to the principles of free speech or even the university's own policies regarding free speech. Many of these university administrators, like Dean Steinbach, a diversity, equity, and inclusion administrator, have taken a role in universities that places a greater emphasis on restricting what is and what is not acceptable, rather than promoting diversity of thought and free speech, which spurs a functioning society and rigorous intellectual debate.

It is because of incidents like this and administrators like Dean Steinbach, that students, both conservative and liberal, at Stanford and college campuses around the country are too scared to speak up in the classroom and share their viewpoints. It has instilled angst into each student for fear of sharing their opinions. Anything they say might also be viciously condemned by these same university administrators; the best option is to merely stay silent and keep one's opinions to themselves. While these administrators claim to create a more open and inclusive environment, they are in fact contributing to just the opposite: a culture which signals conformity and destroys academic debate because of fear of sharing one's opinions. Debate has been expelled from the classroom and forced to die altogether or take refuge in a few rare remaining groups that still offer forums for open and free discussion.



These incidents are surely not unique to Stanford or conservative speakers. In May of 2021, a student at Stanford Law School was put on hold from graduating for satirically mocking the Federalist Society, and many free speech groups quickly and successfully rushed to advocate for the student's right to free speech.<sup>7</sup> On March 2, 2022, students at the University of California, Hastings College of the Law completely disrupted an event with Ilya Shaprio, heckling Mr. Shapiro and preventing him from speaking.<sup>8</sup> On March 10, 2022, students at Yale Law School outnumbered those in attendance for a bipartisan panel on civil liberties, again holding signs and heckling the speakers.<sup>9</sup> Then, just recently on March 14, 2023, Turning Point USA hosted conservative speaker Charlie Kirk at the University of California, Davis.<sup>10</sup> The event was met with violent protests and resulted in arrests. The list of blatant attacks on free speech goes on, and unless concrete actions are taken to protect speech, the list will indubitably continue to grow.

University administrations have often rightly upheld the principle of free speech and their policies after such incidents, including Stanford Law School Dean Jenny Martinez, who demonstrated her commitment to free speech in a lengthy letter to students last week.<sup>11</sup> More administrators should follow Dean Martinez's lead and take up the mantle to reaffirm their commitment to these principles and stand against these unacceptable shout downs, but campus speech policies are often simply disregarded or poorly enforced in the first place, which directly

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<sup>7</sup> Neil Vigdor. "A Law Student Mocked the Federalist Society. It Jeopardized His Graduation." *New York Times*, June 3, 2021, <https://www.nytimes.com/2021/06/03/us/stanford-federalist-society-nicholas-wallace.html>.

<sup>8</sup> Zach Greenberg. "UC Hastings Proposed Event Policy Smacks down the 'Heckler's Veto'." The Foundation for Individual Rights and Expression, October 19, 2022, <https://www.thefire.org/news/uc-hastings-proposed-event-policy-smacks-down-hecklers-veto>.

<sup>9</sup> Aaron Sibarium. "Hundreds of Yale Law Students Disrupt Bipartisan Free Speech Event." *Washington Free Beacon*, April 1, 2022. <https://freebeacon.com/campus/hundreds-of-yale-law-students-disrupt-bipartisan-free-speech-event/>.

<sup>10</sup> Aaron Corpora. "Charlie Kirk Event at UC Davis Prompts Violent Protest." The Foundation for Individual Rights and Expression, March 20, 2023, <https://www.thefire.org/news/charlie-kirk-event-uc-davis-prompts-violent-protest>.

<sup>11</sup> "Next Steps on Protests and Free Speech," Stanford Law School, published March 22, 2023 <https://law.stanford.edu/wp-content/uploads/2023/03/Next-Steps-on-Protests-and-Free-Speech.pdf>

leads to these incidents. And while the continued violations of free speech represent not only a failure of administrations to truly uphold and demonstrate their commitment to free speech, it also represents a concerning trend in students who believe that their opinions are more important than another's, causing them to stop another's right to speak freely. It is a twofold problem of both the administrators who fail to uphold these policies and the students who demonstrate a complete disregard for these principles.

This is why university administrators need to uphold these principles and why Congress must ensure that colleges and universities are adequately enforcing these policies. Students come to the university setting to receive an education to prepare them for the workforce and challenges of the future, but if administrations continue to condone violations of free speech and fail to take concrete steps to ensure they don't happen in the first place, the acceptance of denying free speech will continue to grow amongst students as they eventually become the next leaders in government and business. Universities must step in to educate these students on the basic principles of free speech, ensure these principles are respected, and then discipline students who still refuse to accept another's right to speak freely. While this is the essential job of university administrators, Congress must ensure that this basic policy is ubiquitous throughout colleges in America.

## **Closing**

We at *The Stanford Review* are one of those few groups on campus still dedicated to the principle of free speech and rigorous intellectual debate. We cover incidents like the one at Stanford Law School, and when other outlets may not convey the whole picture or discuss ideas openly, we will. We are concerned over the precedent that this sets for Stanford and other colleges. It further contributes to a culture at Stanford where students are justifiably fearful to

share their viewpoints. This environment has exiled free expression and debate *outside* of the classroom—the very spot where it is most needed and essential. These actions and policies are destroying American universities, and I have witnessed it myself in my own classes which lack the intellectual debate and vitality I hoped for. Student-run organizations like *The Stanford Review* have become the outlets for students to debate freely, often hosting a higher level academic discourse than any typical classroom will provide.

I chose to attend Stanford hoping to grow in a rigorous intellectual environment that would allow me to explore my academic interests. To be very clear, Stanford has provided just that, but, unfortunately, not through the classrooms. I have found it in other groups at Stanford and smaller settings which model what discussion and debate looks like without the fear of retaliation. It is my hope that future students at our colleges do not continue to experience the degradation of free speech and face the threats that may come with sharing their opinions. While individual schools and administrators have affirmed their commitment to free speech, the issue is a greater national problem. This is not a conservative issue, nor a liberal issue. This is the issue at the core of what defines our society in the United States through healthy dialogue and the free exchange of ideas at our colleges and universities. Congress has an opportunity to ensure institutions preserve First Amendment rights and protect speech on college campuses.

Chairman OWENS. Thank you so much for that. I would like to now recognize Suzanne Nossel.

**STATEMENT OF SUZANNE NOSSEL, CHIEF EXECUTIVE  
OFFICER, PEN AMERICA**

Ms. NOSSEL. Chairman Owens, Ranking Member Scott, and distinguished members of the subcommittee, thank you for the opportunity to testify today. I am the daughter of immigrants, a mother of a college freshman and high school sophomore, an attorney by training, and a proud American who served in two Presidential administrations.

PEN America, which I have led for a decade, stands at the intersection of literature and human rights to protect free expression worldwide. We are a non-profit, non-partisan organization with an unwavering commitment to free speech, a principle that underpins democracy, at a cause above politics.

We at PEN America worked on issues related to campus speech since 2016. University campus is the incubator of democratic citizenship, and the breeding ground for leaders in every sector of society. If we do not get free speech and open discourse right on campus, we will not get it right in the media, the courts, or out on the streets.

Our work in this area grew from concerns that a rising generation was turning its back on the principles of free speech. We learned of lectures canceled, or shouted down, faculty targeted by threats and harassments for things they said, and receiving tepid support, and sometimes none at all from their institutions.

Students often lack awareness of the First Amendment, or the precepts of academic freedom, sometimes believing that the best answer to noxious ideas is to drown them out, or to call on university authorities to shut them down.

At PEN America, we argue that the essential drive to render American campuses more diverse, equitable, and inclusive need not, and must not come at the expense of robust, uncompromising protections for free speech and academic freedom.

I have written a book, *Dare to Speak: Defending Free Speech for All*, which centers on 20 principles for how we can live together in our diverse, digitized, and divided society without curbing free speech. Essential insight of our work in this area is the idea that an open campus must uphold the ability of all students to participate freely and fully.

If some students, by virtue of their background, gender, race, nationality, religion, or political views, feel hindered from speaking up in class or voicing their opinions, the marketplace of ideas suffers. Sometimes calls to curtail or punish speech are born out of a frustration that campuses, or society at large, have not done enough to address the lingering vestiges of racial, gender and other forms of exclusion.

While such efforts to suppress speech are misguided, I believe they cannot be effectively addressed without looking at what motivates them. Since 2021, alongside these challenges, we have confronted a new threat to open discourse on campus. We have documented proposed and enacted State legislation, curtailing what can be taught and studied in college and university classrooms.

There are seven laws across seven states that we classify as educational gag orders, affecting higher education. We define educational gag orders as laws that explicitly limit what can be taught and studied on campus. As of March 16, there were an additional 24 higher education bills pending in 15 states across the country.

The wording of these gag orders is deliberately vague. It casts a willful chill on a wide swath of speech as faculty and administrators struggle to understand where the lines are drawn. Collectively, these bills are liberal in their attempt to legislate, but certain ideas and concepts are out of bounds.

They are intended not to keep speech open, but to put universities on notice that they are being watched, and will face the consequences if their decisions fall afoul of the politics.

Indeed, in pushing back against orthodoxies, the proponents of these measures have embraced and even surpassed the very tactics they claim to decry, putting the weight not only of social pressure, but of government power behind efforts to repress certain viewpoints. This year we are also seeing a State of alarming new tactics being introduced to curtail open discourse on campus. These include the takeover of the public New College of Florida by a group of out of State trustees, and the advancement of HB 999 in Florida, which would abolish certain courses of study.

Those who believe in the First Amendment understand that its essence lies in restricting the power of government to meddle in the realm of ideas, not inserting the heavy hand of the State to dictate what can and cannot be taught. Escaping this escalating tit for tat battle of assaults on free speech on U.S. campuses will demand leadership.

University presidents need to insist and ensure that all viewpoints, left and right alike, get a fair hearing on campus. They need to speak up and resist intrusive legislation that micromanages curriculum, and undercuts academic freedom. Efforts to foster diversity, equity, inclusion on campus, should span the gamut of individual differences—racial, socioeconomic, religious, ethnic, ideological, gender based, political and more.

We also need to introduce the norms and ideals of free speech to all students and teach them how to uphold it, whether in the lecture hall, or while mounting a protest.

The intensifying battle for control over free expression in education should worry us all. The greatest casualty of this battle may be neither progressive nor conservative ideas, but the principal of free speech itself. Thank you for the opportunity to testify, and I welcome your questions.

[The prepared statement of Ms. Nossel follows:]

**House Committee on Education and the Workforce  
Subcommittee on Higher Education and Workforce Development  
Hearing on “Diversity of Thought: Protecting Free Speech on College Campuses”**

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**Statement of Suzanne Nossel  
Chief Executive Officer, PEN America  
March 29, 2023**

Chairman Owens, Ranking Member Wilson, and distinguished members of the Subcommittee and Committee, thank you for the opportunity to testify today on diversity of thought on college campuses.

Free speech and open discourse are bedrock underpinnings of our system of government, the lifeblood of our democracy, and enablers and guarantors of other freedoms we cherish and enjoy. Before turning to the bulk of my remarks, I will offer a bit about my own background and an overview of PEN America, our mission, and work.

First, a brief introduction. I am a daughter of immigrants, a mother of a college freshman and a high school sophomore, an attorney by training, and a proud American who had the privilege of serving her country in two presidential administrations. In my career in the corporate, nonprofit, and public sectors, I have worked alongside individuals of varied political leanings. At PEN America, which I have led for the last decade, I have the privilege of continuing that effort, working to protect the foundational right to freedom of expression for all.

#### **ABOUT PEN AMERICA**

PEN America stands at the intersection of literature and human rights to protect free expression in the United States and around the globe. We are proud to be entering our 101st year. Our staying power as an organization is rooted in our nationwide membership and our solidarity with PEN writers' organizations worldwide, but above all in our mission, which centers on the freedom to write. The [PEN Charter](#), adopted in 1948, calls on us to uphold “the principle of unhampered transmission of thought within each nation and between all nations.” Alongside steadfast devotion to free expression, the Charter commits us to do our “utmost to dispel all hatreds and to champion the ideal of one humanity living in peace and equality in one world.” Like the framers of the United States Constitution, the authors of the PEN Charter were prescient about the threats to freedom when speech and expression are curtailed by government action.

We are a nonprofit, nonpartisan organization with an unwavering commitment to free speech, a principle that we view as an underpinning of democracy and a cause above politics. Over its century of history, PEN America has united to protect imperiled Jewish writers in Germany, championed authors imprisoned in Stalin's gulags, and rallied behind Salman Rushdie when he was targeted by a fatwa by the Ayatollah of Iran, and again after the dastardly attack on U.S. soil that nearly took his life last summer. We

championed Liu Xiaobo and launched the campaign that led to his receiving the 2010 Nobel Peace Prize. In 2015 we gave an award to the surviving staff of the satirical French magazine *Charlie Hebdo* and, as a result, faced a boycott from a group of our own members who believed the publication was racist and therefore undeserving of our recognition. We have defended the right of figures on both the right and the left, such as Ann Coulter, Dorian Abbot, Angela Davis, and Milo Yiannopoulos, to speak and be heard on college campuses. We are accustomed to controversy, and to taking on powerful foes.

The wide gamut of free expression issues we tackle demonstrates the depth of our commitment to our principles. We have addressed situations as varied as the impact of China's restrictions on free speech in the mainland and Hong Kong and its rising global influence, including in Hollywood; threats to dissent in Turkey, Russia, and Myanmar; the crisis in local journalism across the United States; a culture of hostility to free expression at colleges and universities; online harassment; disinformation; attacks on press freedom; and digital transnational repression of writers, artists, journalists, and dissidents.

#### **THE CLIMATE FOR FREE SPEECH ON CAMPUS**

We at PEN America have worked extensively on issues related to campus speech since 2016, and have long expressed concern with the shrinking space for free speech in higher education. We have consistently documented mounting threats to free speech emanating from both the left and the right. As an organization of writers that treasures books and ideas, we have a deep, abiding interest in ensuring that American campuses are places where robust debate can flourish, where students can be exposed to the widest breadth of viewpoints and perspectives, and where the lodestar of openness can help point society toward innovation and progress. The university campus is the incubator of democratic citizenship and the breeding ground for leaders in every sector of society. If we don't get free speech and open discourse right on campus, we won't get it right in the media, in the courts, or out on the streets.

Our work in this area originally grew out of concerns that a rising generation was turning its back on the principles of free speech, calling for trigger warnings, safe spaces, and the disinvitation of campus speakers deemed controversial. We have heard from faculty members who have been challenged or even threatened with discipline in the teaching of controversial subject matter in the classroom. We have learned of speakers canceled or shouted down – sometimes by university leaders and sometimes by unruly student protests. Administrators have faced calls to purify campuses of offensive ideas. In other instances, universities have tried to restrict speech by instituting “free speech zones,” delimiting too narrowly the terrain on campus where pamphleteering or protests can occur. Some faculty have been targeted by death threats and online harassment for things they have said, and have received insufficient protection and support from their institutions in defense of their right to free expression.

For their part, students often have little awareness of the First Amendment<sup>1</sup> or the precepts of free speech and academic freedom, sometimes believing that the best answer to noxious ideas is to shout them down, or to call on university authorities to shut them down. At PEN America we have examined these issues in depth, arguing that the essential drive to render American campuses more diverse, equitable, and inclusive need not – and must not – come at the expense of robust, uncompromising protections for free speech and academic freedom. We have pressed this case over time, beginning with a landmark 2016 report,<sup>2</sup> a 2017 white paper concerning legislative efforts to regulate free speech,<sup>3</sup> a [March 2019 report](#) on campus speech in a divided America, and a full online Guide to navigating campus speech controversies.<sup>4</sup> We have convened summits on university campuses including the University of California at Berkeley, Middlebury College, the University of Virginia at Charlottesville, and the University of Mississippi that have been sites of high-profile controversies over free speech issues.

I and my colleagues have presented and spoken about our work on scores of college campuses and before a broad array of audiences, including the Knight First Amendment Institute at Columbia University, the Federalist Society, the Foundation for Individual Rights in Education, the Cato Institute, and academic associations such as the American Council on Education, the American Historical Association, and the American Association of Colleges and Universities. I have also written a book on this topic, *Dare to Speak: Defending Free Speech for All*, which centers on 20 principles for how we can live together in our diverse, digitized, and divided society without curbing free speech. We regularly issue statements on shutdowns and shout-downs of campus speakers and events and on university policies and decisions that trammel speech rights. We have spoken out forcefully against efforts to fire professors for criticizing police on Facebook, for publishing controversial ideas, for showing an image of Mohammed in an art class. We have decried student protests that went too far, such as at Yale, Stanford, and Georgetown. We have urged campus administrators not to revoke fellowships and disinvite speakers. We have insisted that they not remove art installations deemed offensive by some in the campus community or beyond. Last year I wrote a piece in the Chronicle of Higher Education about the dangers of what I termed “proxy reprisals,” namely, a practice by some universities to target those accused of offensive speech for other types of conduct as a way of circumventing the university’s obligation to protect open expression.

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<sup>1</sup> See John Villasenor, *Views among College Students Regarding the First Amendment: Results from a New Survey*, Brookings Institution (Sep. 18, 2017), <https://www.brookings.edu/blog/fixgov/2017/09/18/views-among-college-students-regarding-the-first-amendment-results-from-a-new-survey/>.

<sup>2</sup> PEN America, *And Campus for All: Diversity, Inclusion, and Free Speech at U.S. Universities* (Oct. 17, 2016), <https://pen.org/wp-content/uploads/2017/06/PEN-campus-report-06.15.2017.pdf>.

<sup>3</sup> PEN America, *Wrong Answer: How Good Faith Attempts to Address Free Speech and Anti-Semitism on Campus could Backfire* (Nov. 7, 2017), <https://pen.org/wp-content/uploads/2017/11/2017-wrong-answer-11.9.pdf>.

<sup>4</sup> PEN America, “Campus Free Speech Guide,” <https://campusfreespeechguide.pen.org/>.



A central insight of our work in this area is that any effort to untangle the roots of our free speech controversies must be predicated on a full appreciation of what it means for a campus to be truly open to all ideas and perspectives. An open campus must uphold the rights of all students to participate freely and equitably. If some students, by virtue of their background, gender, race, nationality, religion, or political views feel hindered from speaking up in class or voicing their views, the marketplace of ideas suffers.

Higher education is in the midst of a dramatic demographic shift, with institutions enrolling more students of color than ever before, as well as students from immigrant backgrounds and diverse religious traditions; a sizable percentage are also first-generation college students.<sup>5</sup> This rising generation arrives to the quad with new expectations about respect for individual differences, equality, and having their voices heard. Many of these students have valid concerns about persistent manifestations of discrimination that have outlasted efforts to achieve equality on the college campus. Reporting released last year by the National Center for Education Statistics indicates that race and sexual orientation formed the two largest categories of bias driving hate crimes on campus in 2019, with the total number of hate crimes reported being highest at 4-year private and public institutions.<sup>6</sup> Just last week the Anti-Defamation League reported a 41% spike in incidents of anti-semitism on campus in 2022.<sup>7</sup> Sometimes calls to curtail or punish speech are borne out of a frustration that campuses have not done enough to address these persistent concerns, and that baseline rights of students to be treated equally on campus are being subsumed in favor of speech that is derogatory or intended to provoke. While such efforts to suppress speech are misguided, they cannot be effectively addressed without getting to the root of the problem and looking at the underlying concerns of equality and inclusion that motivate them. Throughout all this work, we are guided by the notion that US colleges and universities can – and must – be genuinely open to both all people, and all ideas.

### EDUCATIONAL GAG ORDERS

Over the last few years, while these challenges have continued and, in some respects, intensified, we have found ourselves dealing with a new, even unprecedented threat to open discourse on campus. We have documented a spate of proposed and enacted state legislation curtailing what can be taught and studied in college and university classrooms. These laws form part of a larger wave of similar restrictions being enacted to govern what is taught in K-12 classrooms and in professional trainings for state

<sup>5</sup> See Jens Manuel Krogstad and Richard Fry, *More Hispanics, Blacks Enrolling in College, but Lag in Bachelor's Degrees*, Pew Research Center, (Apr. 14, 2014), <http://www.pewresearch.org/fact-tank/2014/04/24/more-hispanics-blacks-enrolling-in-college-but-lag-in-bachelors-degrees/>; RTI International, *First-generation College Students: Demographic Characteristics and Postsecondary Enrollment*, NASPA, ((2019), <https://firstgen.naspa.org/files/dmfile/FactSheet-01.pdf>.

<sup>6</sup> National Center for Education Statistics. (2022). Hate Crime Incidents at Postsecondary Institutions. *Condition of Education*. U.S. Department of Education, Institute of Education Sciences. Retrieved March 26, 2023, from <https://nces.ed.gov/programs/coe/indicator/a22>.

<sup>7</sup> See Anti-Defamation League, <https://www.adl.org/resources/report/audit-antisemitic-incidents-2022>

employees that were first introduced and passed in 2021. There are currently seven laws – in Florida, Idaho, Iowa, Mississippi, Oklahoma, South Dakota and Tennessee – that we classify as educational gag orders affecting higher education; we define educational gag orders as laws that explicitly limit what can be taught and studied on campus. In the past two years these laws have sought to hinder speech on campus regarding race, sex, gender identity, or other concepts that some deem “divisive.” A few examples:

- Florida’s law, HB 7 (passed in 2022), bars public colleges from adopting instructional material that “espouses, promotes, advances, inculcates, or compels” belief in certain ideas about race, sex, color, or national origin. It mandates that classroom instruction related to past racial injustice may not “indoctrinate or persuade” students to believe these ideas. The higher education portion of this law, which also applies to private institutions, is currently stayed by a federal court.
- Mississippi’s law, SB 2113 (passed in 2022), prohibits colleges from compelling students to affirm or adopt certain ideas related to race, sex, or other characteristics, nor make “a distinction or classification of students based on account of race.”
- Oklahoma’s law, HB 1775 (passed in 2021), bans “mandatory gender or sexual diversity training or counseling” for students or “orientation or requirement that presents any form of race or sex stereotyping or a bias on the basis of race or sex” in higher education. It also prohibits schools from using specified concepts in courses.

As of March 16, there were an additional 24 higher education bills pending in the current legislative sessions in 15 states across the country. Many contain similar provisions.

As an organization that stands for open discourse, we understand and share concerns with the state of discourse on campus and the role of campus stakeholders in shaping the campus environment. On some campuses, certain DEI programs and trainings may be overly ideological or tendentious. There may be settings where students feel obligated to signal their support for particular viewpoints or perspectives or else face stigma from their classmates or even professors. I have spoken to students in these situations; it can feel like a deep betrayal of the purposes for which they came to university. It is not wrong to point out that progressive orthodoxies can sometimes stifle opposing views. But a principle isn’t a principle unless it’s extended to all. The passage of these laws is an exercise in using the power of government to apply free speech protections only to the ideas that lawmakers support, while banning and censoring outright ideas that lawmakers oppose.

If you think a pall of orthodoxy has set in on campus, the way to counter it, at least here in the United States and in light of our system and values grounded in the First Amendment, is to follow Justice Louis Brandeis’s maxim put forth nearly 100 years ago in *Whitney v. California*. Those behind these repressive measures have identified their

version of what Brandeis once called falsehoods and fallacies; proponents of these gag orders might put "divisive concepts" or what they might call "wokeness" under those labels. But Brandeis's answer to falsehoods and fallacies was "to expose through discussion . . . to avert the evil by the process of education." "The remedy to be applied," he insisted, was "more speech, not enforced silence."

These gag orders flout that bedrock principle. They enforce silence on topics and ideas their authors disfavor. Their wording is deliberately vague, casting a willful chill on a wide swath of speech as faculty and administrators struggle to understand where the lines are drawn and what might get them into trouble.

Collectively, these bills are illiberal in their attempt to legislate that certain ideas and concepts are out of bounds. Their adoption demonstrates a disregard for academic freedom, liberal education, and the values of free speech and open inquiry that are enshrined in the First Amendment, and that anchor a democratic society. Legislators who support these bills appear determined to use state power to exert ideological control over public educational institutions. It must also be recognized that the movement behind these bills has brought a single-minded focus to bear on suppressing content and narratives by and about people of color and LGBTQ+ people specifically—something which cannot be separated from the role that racism and discrimination still play in our society and politics.

Such measures are intended not to keep speech open, but rather to put universities on notice that they are being watched and will face the consequences if their decisions fall afoul of politics. Indeed, in pushing back against orthodoxies the proponents of these measures have embraced and surpassed the very tactics they claim to decry, putting the weight not only of social pressure, but of government power, behind efforts to repress certain viewpoints.

That invocation of government power is what renders these measures so invidious. The censoriousness of students or faculty narrow-mindedly silencing speakers or colleagues is contemptible. But that activity is not backed by the power of the state, and it is often fleeting. Over time sensibilities change, political and social pendulums swing. But restrictions on speech that are cemented into law don't just evaporate. They harden into rigid strictures that not only shut down debate, but reshape incentives in distorting ways. They set precedents that get replicated, chipping away at the reputation of US universities as the world's most open and most desirable. It is for precisely this reason that the government prohibition of ideas was the central concern of the Founders when they wrote and adopted the First Amendment protection on freedom of speech.

These precedents can also be turned around. Today states are banning discussions of diversity, equity, and inclusion. What's to stop states in the future from banning mention of conservative viewpoints on transgender identity, the validity of affirmative action, or the idea that life begins at conception? For politicians to arrogate the power to dictate

what can and cannot be taught could risk putting all kinds of issues and topics out of bounds.

Proponents of educational gag orders are not wrong to call out elements of diversity, equity, and inclusion initiatives when they veer into the outright suppression of speech and ideas. Progressives too often forget that the movements they wage -- whether for racial justice, gender justice, climate or anything else -- depend upon free speech protections to guarantee the space for dissent, and that such protections must apply equally to speech with which *they* disagree. Some fail to acknowledge, too, that worthwhile perspectives and solutions can emerge from outside their own ideological comfort zones.

But the cure offered by these gag orders -- intrusive legislation to muzzle the opposite set of views -- is significantly worse than the disease. State-ordered legal bans based on viewpoint -- whether ideas on race or diversity programs -- strike at the heart of what the First Amendment protects.

This year, we are also seeing a spate of alarming new tactics being introduced to curtail academic freedom and open discourse on campus, tactics that infringe on the autonomy of educational decisions at universities and risk simply substituting one set of constraints on viewpoint diversity with another. These include:

- The takeover of the public New College of Florida by a group of out-of-state trustees connected with the Governor's political agenda, appointed by him to remake the university, purportedly in the image of a Christian private college. The new trustees have fired the president, driven away the provost, and removed several other senior administrators in a mission to "liberate the campus" from "cultural hostage takers."
- The Florida state legislature has advanced a bill, HB 999, that would ban state universities from using funds for DEI and abolish courses of study that include gender studies, critical theory, including theories on race, gender, ethnicity and social justice. The measure would also require political appointees to rewrite university mission statements, ban "theoretical" or "experimental" courses from general education, and pare back the protections of faculty tenure.
- A set of proposed bills in Texas, SB 16, 17, and 18, would ban faculty tenure and insert governing boards into approving every job announcement and course description. They would also create a statewide blacklist for faculty or staff determined by political appointees to have violated vague prohibitions on DEI, banning them from employment in Texas public higher education.

These censorious measures reveal an underlying problem with the approach now being taken to issues of campus viewpoint diversity and free speech. Fundamentally, these vital goals are ones that will not be advanced by legislation. Those who believe in free speech and the First Amendment understand that its essence lies in restricting the power of government to meddle in the marketplace of ideas. When it comes to campus

free speech, there are multiple reasons why legislative intrusion is misguided, and risks setting back the very causes it purports to advance:

- It applies a one-size-fits-all approach – Every college and university has its own history, culture, population, geography, areas of academic emphasis, and challenges. This is a hallmark of the United States' decentralized educational system. Our state educational systems include everything from Research 1 universities to small community colleges. Blanket legislation dictating what can be taught or said across every campus in a state denies this distinctiveness, imposing made-in-the-statehouse solutions that can stoke tensions, chill speech, and even intensify the propensities they are intended to counter.
- Substitutes political for educational judgment - Faculty and university leaders are experts in education and standard-bearers of the scholarly disciplines at the heart of university life. They are best placed to determine, through a process of shared governance, how to uphold free expression and viewpoint diversity on their campuses. To override their judgment through legislation inserts politics into intellectual life and violates the sanctity of the university as an environment where free inquiry is safeguarded from the distorting influence of political motives.
- Alienates students - An approach that privileges the speech of some over that of others runs the significant risk of feeding student perceptions that the First Amendment is nothing more than a political tool wielded by the powerful to suppress disfavored viewpoints. By fostering such cynicism, educational gag orders risk compounding the problem of a rising generation that is alienated from the principle of free speech and ready to sacrifice it in the name of other values. By fueling such perceptions, we will surrender the chance to persuade skeptical students that the First Amendment is a constitutional protection that serves us all in a democratic society.
- Adds another burdensome layer of oversight – Adding legislative review bodies and other forms of enhanced government oversight, as many of these laws and bills do, only adds to that weight, bearing down on the open, freewheeling, and innovative character of a thriving campus. To the extent that administrators are failing to uphold their obligations to support ideologically diverse student groups and speak up in defense of free speech, further intimidating and disempowering them through the heavy hand of government oversight will compound rather than solve the problem.
- Enhances polarization – While questions of speech implicate power and politics, it is essential that free speech on campus not become a politicized or partisan issue. The First Amendment leans neither left nor right. It is a cause above politics. But new forms of legislation inject politics into the heart of academia. Universities, like our larger society, are increasingly cordoned into ideological camps. To the extent that faculty and students are put into the position of policing one another's adherence to legislative restrictions on teaching and

learning, those fissures will deepen. The value of intellectual diversity lies not in campus constituents talking at or past one another, but rather in genuine intellectual exchange. That exchange depends upon a measure of trust and civility that underpins a campus community. Prospects for authentic intellectual give-and-take diminish when the campus becomes an environment where snitching and retaliation are rewarded and encouraged, and where some ideas and expressions are favored over others by legislative fiat.

These bills are not about achieving diversity of thought on campus. They are about exposing and intimidating people with particular viewpoints and ideas.

As an organization that works to defend freedom of expression both in the U.S. and globally, PEN America is especially attuned to the ways in which these efforts also represent worrying echoes of educational censorship enacted by oppressive regimes around the world. Hungarian Prime Minister Viktor Orbán revoked accreditation and funding for gender studies programs in 2018, and expelled the prestigious Central European University (CEU) from Hungary shortly thereafter. His assault on higher education was part of a larger crackdown on independent media and civil society; at the time, PEN America called the expulsion of CEU evidence that the Hungarian government was “hostile to academic freedom and freedom of thought.” Similar tactics risk taking the U.S. down an alarming path.

Escaping this escalating tit-for-tat battle of assaults on speech on U.S. campuses will demand leadership across the political spectrum. University leaders need to resist intrusive legislation that micromanages curriculum and undercuts academic freedom. University presidents also need to insist and ensure that all viewpoints -- left and right alike -- get a fair hearing on campus. Collectively, they need to get to the root of the problem, which includes serious disparities in ideological representation in many fields of inquiry, not just in terms of who is on the faculty, but as reflected in who enrolls in courses, completes terminal degrees, and is available to teach. Until those pipelines are built, ideological diversity on campus will continue to lag. Efforts to foster diversity, equity and inclusion on campus should span the gamut of individual differences - racial, socio-economic, religious, ethnic, ideological, gender-based, political and more.

Progressive leaders need to draw the line at approaches that seek to muzzle criticism, including through demonization and stigmatization that make the cost of raising questions too high. Conservatives need to reject an approach that meets informal chilling of speech with out-and-out government censorship. Education officials should inculcate and incentivize college leaders, administrators, and faculty to maintain a campus open to all views, rather than responding to the exclusion of ideas they like with laws prohibiting those they don't. Attaining all forms of diversity, including diversity of viewpoints, should be a priority across every area of the university, from faculty hiring committees to student life administrators. These adaptations are critical as an economic issue as well; the stifling approach to higher education we are now seeing threatens the

reputation of U.S. colleges and universities as global leaders in open intellectual exchange and innovation.

We also need to introduce the norms and ideals of free speech to all students through freshman orientation seminars or courses that expose them to the value of freedom of expression and teach them how to uphold it on campus, whether in the lecture hall or while mounting a protest. This imperative has spurred PEN America to launch free expression institutes for youth, and we are exploring opportunities with universities to bring these institute programs to campus.

This escalating battle for control over free expression in education should worry all those who care about free speech, no matter their politics. Some on the left have grown too quick to want to silence those who offend or threaten them. Some on the right are going a major step further, legitimizing the use of government power to render certain curricula, ideas and viewpoints off-limits. The greatest casualty in this battle may be neither progressive nor conservative ideas, but the principle of free speech itself.

Thank you to the committee for looking into this vital set of issues, and for the opportunity to testify. I look forward to answering any questions you may have.

Chairman OWENS. Thank you, also. I would like to last recognize Ilya Shapiro.

**STATEMENT OF MR. ILYA SHAPIRO, DIRECTOR OF CONSTITUTIONAL STUDIES, MANHATTAN INSTITUTE, NEW YORK, NEW YORK**

Mr. SHAPIRO. Thanks, Chairman Owens and distinguished members. I actually agreed without 90 percent of what Suzanne just said, but thanks for this chance to share my thoughts about the State of campus free speech.

I have long been a First Amendment advocate but more recently had a lived experience in this area. Just over a year ago, I had my most direct and acute exposure to higher ed culture that is hostile to civil discourse. Indeed, shut up was the response in more obscene terms, that I got from students at UC Hastings when I tried to speak there just over a year ago about my last book, *Supreme Disorder*.

They prevented the event from taking place, chanting and banging as if it was to occupy Wall Street. Applying the bad faith lens to a poorly phrased tweet, activists had judged me a racist misogynist, and my expertise illegitimate. I was suspended from my new position at Georgetown, pending an investigation into whether I violated university policies on harassment and discrimination.

Now those who shut down my event wanted to hear neither my reasoning about the President's Supreme Court criteria, nor my broader analysis of the confirmation battle to come. The protestors also castigated their own law school for even allowing me to speak, never mind that Hastings would be violating the First Amendment if it disapproved speakers based on the content of their speech.

You would think that law students should have a greater appreciation for open engagement with provocative ideas than undergrads. After all, lawyers face much harder situations than bad tweets. My experience was no isolated incident, not even for March 2022. The following week, a similar thing happened at Yale, at a panel bringing together lawyers from the left and the right that agreed on little other than the importance of free speech.

Dean Heather Gerken basically buried her head in the sand. Then it happened again at Michigan, when students obstructed a debate on Texas's Heartbeat bill. The only thing these events had in common was that speakers presented ideas that some did not like. The trend of canceling speakers instead of challenging them, represents the loss of grace in our culture more broadly.

The desire to ascribe maligned motives to one's political enemies, to think of them as evil, not merely wrong. As American society is secularized, politics has replaced religion to fill our spiritual needs. In that context, it is easy to see one's political opponents as heretics. Then of course their sacrilege is not worth hearing.

It will take real courage from political leaders and cultural influencers to get us back to a place where we can disagree without wanting to ruin the lives of the people with whom we disagree. As for me, after a 4-month investigation, Dean Bill Trainer cleared me on the technicality that I was not an employee when I tweeted. The report from the Diversity Office set me up for discipline the next time that I transgressed progressive orthodoxy.



Any comment that anyone found offensive would have gotten me in trouble, such as a opining that racial preferences in admissions were unconstitutional. The freedom to speak is no freedom at all, if it makes an exception for speech someone doesn't like.

Georgetown applies even these so-called principals inconsistently. Contrast my case with many examples of professors tweeting much worse things from the left, castrating white men who supported Kavanaugh for example. It is free speech for thee, not for me.

Strong policies are not enough if university leaders are not willing to stand up to those who demand censorship. Proliferating DEI offices, and orthodoxies that stifles intellectual diversity, undermines equal opportunity and excludes dissenting voices. It is quite overwhelming.

Even the deans of elite law schools buck these political commissars at their peril. What Georgetown subjected me to—would have subjected me to had I stayed, is a heckler's veto that leads to a star chamber. I made a noisy exit, and I am using this platform to shine a light on the rot in academia. I am generally long on America, but we may have passed the point of no return in terms of the illiberal takeover of higher education.

DEI offices have broadened terms like harassment and discrimination not to promote welcoming environments, but to enforce progressive ideology. This is not the decades old complaint about from conservatives about liberals taking over the faculty lounge.

Wherever college president's stand up for free speech, the mob disburses, but most officials are careerist bureaucrats. Deans like Trainer and Gerken are not woke radicals. They are spineless cowards, unwilling to confront the illiberal inmates who have taken over their institutions. Schools must instill a culture of respect for opposing views and end compelled speech in the form of diversity statements.

It can not all be done from within, so we need external controls from State legislators and attorneys general, as well as congressional oversight tied to Federal funding. We also need exogenous shocks, like the boycott of hiring judicial clerks from Yale, led by Judge Jim Ho, which I think he should now extend to Stanford.

There is still a long way to go before universities return to their mission of seeking truth and knowledge, and law schools should return to their goal of teaching future lawyers to uphold the rule of law. The battle has been joined, thank you.

[The prepared statement of Mr. Shapiro follows:]

**Written Testimony to the House Committee on Education and the Workforce  
Subcommittee on Higher Education and Workforce Development**

Hearing on “Diversity of Thought: Protecting Free Speech on College Campuses”

March 29, 2023

**Ilya Shapiro**  
Director of Constitutional Studies  
Manhattan Institute

Chairman Owens, Ranking Member Wilson, and distinguished members of the Subcommittee, thank you for this opportunity to share my thoughts about the alarming state of free speech at our nation’s institutions of higher learning. I’ve long been a First Amendment scholar and advocate, including on college campuses, but more recently I’ve also had my own “lived experience” with this issue. Now my academic scholarship, legal briefing, and popular writing are all informed by that personal brush with collegiate cancel culture. I’m now all too aware of the toxic climate that foments self-censorship as students and professors alike walk on eggshells lest they cross the politically incorrect frontier and have their careers threatened by an illiberal mob.<sup>1</sup>

Just over a year ago, I had the most direct and acute exposure to a higher-ed culture that’s hostile to free speech and civil discourse. Indeed, “shut up” was the response, except in more obscene terms, that I got from students at the University of California Hastings College of Law (since renamed UC Law SF) when I tried to speak there on March 1, 2022. They prevented the event from taking place, chanting and banging as if it were Occupy Wall Street.<sup>2</sup> It’s the first time I’d ever been protested in more than a thousand speaking events and it’s a damning indictment of the state of academia at a time when a toxic cloud has enveloped all of our public discourse.

Although the Federalist Society chapter had booked a room and invited me to discuss a subject on which I’d written a book, *Supreme Disorder: Judicial Nominations and the Politics of America’s Highest Court*, a “heckler’s veto” prevailed: a situation in which someone who disagrees with a message causes the speaker to be silenced. Of course, protests are protected by the First Amendment and university free-speech policies but, as Berkeley Law Dean Erwin Chemerinsky has written, “Freedom of speech does not protect a right to shout down others.”<sup>3</sup>

In my case, activists applied a bad-faith lens to a poorly phrased tweet in which I criticized President Biden’s criteria for his forthcoming Supreme Court nomination, thereby adjudging me a racist misogynist and my expertise illegitimate. Specifically, in January 2022, I criticized the president’s decision to limit his candidate pool by race and sex, in fulfillment of a campaign promise to appoint a black woman. I argued that the chief judge of the D.C. Circuit, Sri Srinivasan (who happens to be an Indian-American immigrant), was the best choice, meaning that *everyone*

<sup>1</sup> See, e.g., Heterodox Academy, “Campus Expression Survey,” <https://heterodoxacademy.org/campus-expression-survey> (presenting annual data for 2019-22 and showing how most students feel unfree to discuss many issues).

<sup>2</sup> See Ilya Shapiro, “Mob Rule and Cancel Culture at Hastings Law School,” *Wall Street Journal*, Mar. 22, 2022, <https://on.wsj.com/3THtpzt>.

<sup>3</sup> Erwin Chemerinsky & Howard Gillman, “Free Speech Doesn’t Mean Hecklers Get to Shut Down Campus Debate,” *Washington Post*, Mar. 24, 2022, <https://wapo.st/3ni0Cp1>. See also Erwin Chemerinsky, “UC Irvine’s Free Speech Debate,” *L.A. Times*, Feb. 18, 2010, <https://lat.ms/3z2W1mL>. (“There is simply no 1st Amendment right to go into an auditorium and prevent a speaker from being heard, no matter who the speaker is or how strongly one disagrees with his or her message.”).

*else in the entire world* was less qualified. So if Biden kept his promise, he would pick a less-qualified—or, as I inartfully characterized given Twitter’s character limit, a “lesser”—black woman. I deleted the tweet and apologized for my poor choice of words, but I maintain that Biden should’ve considered “all possible nominees,” as 76% of Americans agreed in an ABC poll.<sup>4</sup>

Nevertheless, I was suspended from my new position at Georgetown’s Center for the Constitution pending an investigation into whether my comments violated university policies on harassment and discrimination. And now a secondary effect of my tweet and suspension was that students at another law school were determined not to allow me to express my ideas.

The vocal minority of students who shut down my event wanted to hear neither my reasoning about President Biden’s selection criteria nor my broader analysis of the confirmation battle now that there was an actual nominee. And they did so in the vilest language imaginable, several times getting literally in my face or blocking my access to the lectern.

The protestors also castigated their own law school for allowing me to speak, and in a concurrently circulated letter called for “a committee of diverse student representatives” to approve speakers, among other demands about mandatory training in critical race theory for students and faculty. Never mind that Hastings, as a public institution, would be violating the First Amendment if it disapproved speakers based on the content of their speech.

And never mind that, as one of Hastings’ deans advised the protestors in the few minutes when they weren’t chanting and banging, not allowing a duly invited speaker to speak went against school rules. As the school’s chancellor David Faigman pointed out in a community-wide email the next day, “Disrupting an event to prevent a speaker from being heard is a violation of our policies and norms, including the Code of Student Conduct and Discipline, Section 107 (‘Harmful Acts and Disturbances’), which the College will—indeed, must—enforce.”

But it wasn’t enforced, and nobody was disciplined, as the chancellor’s further long email detailed a month later. You’d think that law students should have a *greater* appreciation for spirited and open engagement with provocative ideas than undergraduates. After all, they’ll be facing much harder situations in their legal careers than bad tweets.

But my experience was no isolated incident—not even for that month of March 2022! The following week, a similar thing happened at Yale, ironically over a panel bringing together lawyers from the left and right who agreed on the importance of free speech. Yale Dean Heather Gerken basically buried her head in the sand. Then it happened again at the University of Michigan, when students obstructed a debate on Texas’s heartbeat bill. And that’s just law schools; forget the craziness that’s been going on for some time on undergraduate campuses!

The only thing these events had in common was that speakers were presenting ideas that some students found objectionable. We’ve gotten to a place where questioning affirmative action or abortion is outside the academic Overton window, the acceptable range of policy views.

This problem isn’t limited to ivory towers and leafy quads. The trend of canceling speakers rather than challenging them also represents the loss of grace in our culture more broadly, the desire to ascribe malign motives to one’s political enemies and unwillingness to think of them as merely wrong, rather than evil.

Given the Left’s control of the commanding heights of culture, education, and technology, those expressing conservative views are much more often targeted by both online and real-world mobs. But it happens to those on the left too, like Whoopi Goldberg—who has shown ignorance

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<sup>4</sup> Brittany Shepherd, “Majority of Americans Want Biden to Consider ‘All Possible Nominees’ for Supreme Court Vacancy: POLL,” ABC News, Jan. 29, 2022, <https://abcn.ws/42zf2Bt>.

about the Holocaust (and many other things), not antisemitism. Even worse, it happens to regular people whose meager donations to politically incorrect causes gets them doxed, boycotted, fired, or—such as in Canada during protests over Covid policy—frozen out of their bank accounts.

This cancel culture is easy to diagnose, but hard to remedy. Too many people have lost sight of the golden rule of treating others as they want to be treated. Although often ascribed to the Bible, that principle predates Christianity and indeed needs not be tied to any faith. Still, as American society has secularized, politics has replaced religion to fill the spiritual needs that humans have had since time immemorial. In that context, it's easy to see one's political opponents as heretics—and then of course their sacrilege isn't worth hearing.

The problem goes far beyond speech on campus, worrying as developments here are for the next generation. It's even more important to have a national reckoning about our inability to discuss controversial issues without canceling those with whom we disagree. How are we to continue as a nation if every policy dispute is existential and every election a Manichean battle?

Soon after my Georgetown scandal broke, I jokingly tweeted at Whoopi that she and I ought to go on Joe Rogan's podcast to hash stuff out. Indeed, I'm willing to go anywhere to debate constitutional law or the importance of civil discourse—as I have, at law schools and on media programs around the country. But it'll take more than canceled professors and pundits to get us back to a place where we can disagree without wanting to ruin the lives of people with whom we have those disagreements. It'll take real courage from political leaders and cultural influencers to disrupt the current toxic moment.

As for me, after a *four-month* investigation into that tweet, the Georgetown University Law Center reinstated me in early June 2022. But after full consideration of the report I got from the Office of Institutional Diversity, Equity and Affirmative Action, or IDEAA, and on consultation with counsel and trusted advisers—especially my wife, a better lawyer than all of us—I concluded that remaining in my job was untenable.

Dean Bill Treanor cleared me on the technicality that I wasn't an employee when I tweeted—a junior associate at WilmerHale, the white-shoe firm Georgetown hired to advise them, must've looked at a calendar—but the IDEAA implicitly repealed the university's Speech and Expression Policy. They set me up for discipline the next time I transgress progressive orthodoxy. Instead of participating in that slow-motion firing, I resigned.

IDEAA speciously found that my tweet criticizing President Biden for limiting his Supreme Court pool by race and sex required “appropriate corrective measures” to address my “objectively offensive comments and to prevent the recurrence of offensive conduct based on race, gender, and sex.” Treanor reiterated these concerns in a public statement, further noting the “harmful” nature of my tweets. But IDEAA made clear that there's nothing objective here: “The University's anti-harassment policy does not require that a respondent intend to denigrate,” the report says. “Instead, the Policy requires consideration of the ‘purpose or effect’ of a respondent's conduct.” That people were offended, or claim to have been, is enough to break the rules.

IDEAA asserted that if I “were to make another, similar or more serious remark as a Georgetown employee, a hostile environment based on race, gender, and sex likely would be created.” Any comment that *anyone* found offensive would've subjected me to discipline. Consider the following all-too-real hypothetical situations:

- If I lauded the Supreme Court decisions that overruled *Roe v. Wade* and protected the right to carry arms—as I would go on to do—you can imagine that an activist could've claimed

that my comments “deny women’s humanity” and make her feel “unsafe” and “directly threatened with physical violence.”

- If I had met with students concerned about my ability to treat everyone fairly, which I would’ve been happy to do even if Dean Treanor hadn’t asked me to, one attendee could’ve filed a complaint calling me “disingenuous” and the “embodiment of white supremacy.”
- When the Supreme Court heard the Harvard and UNC affirmative-action cases last fall, if I opined in media interviews and op-eds that the Constitution bans racial preferences—as I did—hundreds of Georgetown stakeholders could’ve signed a letter that, borrowing language from Treanor’s statements, asserted that my comments “are antithetical to the work that we do here every day to build inclusion, belonging, and respect for diversity.”
- In a class I’d be teaching on Supreme Court practice, a student could’ve felt uncomfortable or even “harmed” with his assigned position in a mock oral argument in *303 Creative v. Elenis*, the case that considers whether a designer can be compelled to create a website for a same-sex wedding. “To argue that someone can deny service to members of the LGBTQIA2S+ community is to treat our brothers and sisters as second-class citizens, and I will not participate in Shapiro’s denigrating charade,” he’d write on the student listserv.

I could go on, but you get the idea. It’s the Georgetown administrators who created a hostile work environment *for me*.

Fundamentally, what Treanor did—what he allowed IDEAA to do—is to repeal the Speech and Expression Policy that he claims to hold dear. The freedom to speak is no freedom at all if it makes an exception for speech someone finds offensive or counter to some nebulous conception of equity. And Georgetown showed how the university applies even these self-contradicting “principles” inconsistently. Contrast my case with these recent examples:

- In 2018, Prof. Carol Christine Fair of the School of Foreign Service tweeted during Justice Kavanaugh’s confirmation: “Look at this chorus of entitled white men justifying a serial rapist’s arrogated entitlement. All of them deserve miserable deaths while feminists laugh as they take their last gasps. Bonus: we castrate their corpses and feed them to swine? Yes.” Georgetown held this to be protected speech.
- In 2020, law professor Heidi Feldman tweeted that “law professors and law school deans” should “not support applications from our students to clerk for” judges appointed by President Trump. “To work for such a judge,” she continued, “indelibly marks a lawyer as lacking in the character and judgment necessary for the practice of law.” These comments could threaten the careers of all conservative and libertarian students, or anyone who clerks for duly confirmed but disfavored judges. But Georgetown took no action.
- In April 2022—months after my tweet—Feldman tweeted: “We have only one political party in this country, the Democrats. The other group is a combination of a cult and an insurrection-supporting crime syndicate.” She went on: “The only ethically and politically responsible stance to take toward the Republican ‘party’ is to consistently point out that it is no longer a legitimate participant in U.S. constitutional democracy.” Unlike I was going to be doing, Feldman teaches first-year law students in mandatory courses. Yet this pattern

of remarks created a hostile environment for Republican students—a protected class under D.C. law. The tweets were quietly deleted without apology or disciplinary action.

- The following month, after the leak of the *Dobbs* draft opinion, law professor Josh Chafetz tweeted: “The ‘protest at the Supreme Court, not at the justices’ houses’ line would be more persuasive if the Court hadn’t this week erected fencing to prevent protesters from coming anywhere near it.” He added, “When the mob is right, some (but not all!) more aggressive tactics are justified.” Later, he invited “folks” to “snitch tag @GeorgetownLaw” and taunted that the school was “not going to fire me over a tweet you don’t like.”

Chafetz was right about the last point, because it’s free speech for thee, not for me. To be clear, my point is not that these professors should’ve been disciplined, but that the sham investigation into my speech should never have been launched.

It’s all well and good to adopt strong free-speech policies, but it’s not enough if university administrators aren’t willing to stand up to those who demand censorship. Proliferating DEI (Diversity, Equity, Inclusion) offices enforce an orthodoxy that stifles intellectual diversity, undermines equal opportunity, and excludes dissenting voices. Even the deans of elite law schools buck these political commissars at their peril.

What Georgetown subjected me to, what it would’ve subjected me to if I had stayed, is a heckler’s veto that leads to a Star Chamber. “Live not by lies,” warned Aleksander Solzhenitsyn. “Let the lie come into the world, let it even triumph. But not through me.” I couldn’t live that way, so I made what lawyers call a noisy exit and am using this moment and the platform I’ve been given to shine a light on the rot in academia.

Last fall, when Justice Thomas withdrew from the class he’d been teaching at the George Washington University Law School, it was just one more example of the poisonous atmosphere in academia that makes it impossible to have a free exchange of ideas. GW administrators had admirably stood up to the mob demanding he be canceled for his vote to overturn *Roe v. Wade*, citing academic-freedom guidelines that don’t shield students from “ideas and opinions they find unwelcome, disagreeable, or even deeply offensive.” Still, the justice presumably figured it wasn’t worth the aggravation and heightened security. It’s a shame that Justice Thomas felt the need to withdraw—and a stark contrast to the announcement that the newly retired Justice Breyer would be teaching at Harvard. That’s a shameless double standard.

I’m generally long on America—like Justice Kavanaugh, I live on the sunrise side of the mountain—but I’m pessimistic about academia. Perhaps we’re past “peak woke” in society writ large, as normal people, concerned with their families and livelihoods rather than performative virtue-signaling, call out progressive fads that don’t survive contact with reality. But we may have passed the point of no return in terms of the illiberal takeover of higher education.

And I do mean *illiberal*. What we’re seeing isn’t the decades-old complaint about liberal professors—I don’t think the ideological ratio has changed much since I was in college 25 years ago or law school 20 years ago—but weak administrators who placate the radical Left. What began as mere bureaucratic bloat—around 2010, schools started having more non-teaching staff than full-time faculty, and eventually many began to have more administrators *than students*—has exploded into vast DEI bureaucracies. A 2021 survey of the “power conferences” (65 large universities representing 16% of all students at four-year institutions) found, using publicly available data, that the average school has more than 45 people devoted to DEI, which is more than the average

number of professors they have teaching history.<sup>5</sup> Indeed, DEI is the fastest-growing segment of the educational bureaucracy, with staffs on average four times larger than those that provide legally mandated accommodations to students with disabilities. (The study was careful to exclude people whose primary responsibility was in Title IX, equal employment opportunity, or other legal obligations to comply with federal/state civil rights laws.)

DEI offices have broadened terms like “harassment” and “discrimination” not to promote equal opportunity or a welcoming campus environment—they seem to fail on their own terms<sup>6</sup>—but to enforce progressive ideology. And they have every bureaucratic incentive to do so, to justify their power and budgets by addressing petty grievances in heavy-handed, public ways.

So I’m pessimistic that anything will change at any school where academic freedom and free speech aren’t supported and where rules against hecklers’ vetoes aren’t followed. Too few administrators follow the example of then-University of Chicago President Robert Zimmer, who, in response to pressure to punish Prof. Dorian Abbot for criticizing affirmative action, reaffirmed the university’s commitment to faculty members’ freedom to disagree with any university policy.

One very recent example of a positive pronouncement in this regard came from Stanford Law School Dean Jenny Martinez, who responded to the March 9 disruption of Judge Kyle Duncan’s speech by issuing a forthright and scholarly 10-page letter regarding her commitment to free speech. (That incident was the worst manifestation of the illiberal trends I’ve identified, not because it involved a federal judge but because the officials in attendance did nothing to stop it and indeed DEI Dean Tirien Steinbach—who has been placed on leave—encouraged it and also berated the invited speaker in prepared remarks.) Notably, Dean Martinez explained how “our commitment to diversity and inclusion means that we must protect the expression of all views.” It really is a remarkable document; one particular section merits extended quotation:

Moreover, there are many ways to support diversity, equity, and inclusion that are not inconsistent with a commitment to academic freedom. For example, as an educational institution dedicated to training future lawyers, we support diversity, equity, and inclusion by encouraging thoughtful and critical discourse about the law and legal system, by training students to offer substantive critiques of injustice that they encounter, by teaching future lawyers how to marshal evidence that supports their point of view and how to make arguments that convince others. We support diversity, equity, and inclusion when we encourage people in our community to reconsider their own assumptions and potential biases. We support diversity, equity, and inclusion when we encourage students to connect with and see one another as people. We support diversity, equity, and inclusion when we teach each and every one of our students how to be the best possible lawyer they can be, and take those skills of advocacy out into the world.

<sup>5</sup> Jay Greene and James Paul, “Diversity University: DEI Bloat in the Academy,” Heritage Foundation Backgrounder No. 3641, July 27, 2021, [https://www.heritage.org/sites/default/files/2021-07/BG3641\\_0.pdf](https://www.heritage.org/sites/default/files/2021-07/BG3641_0.pdf).

<sup>6</sup> See, e.g., Jonathan Haidt and Lee Jussim, “Hard Truths About Race on Campus,” *Wall Street Journal*, May 6, 2016, <https://on.wsj.com/3n8fFLA> (showing how diversity programs do not help race relations, but actually hurt them, especially for black students); Frank Dobbin and Alexandra Kalev, “Why Diversity Programs Fail,” *Harvard Business Review*, July-Aug. 2016, <https://bit.ly/3nglY5I> (“The positive effects of diversity training rarely last beyond a day or two, and a number of studies suggest that it can activate bias or spark a backlash.”); Scott Yenior, “How Texas A&M Went Woke,” Report of the Claremont Institute Center for the American Way of Life, Feb. 2023, <https://bit.ly/3neb1St> (showing how DEI programming increased racial tensions and decreased all students’—but especially black students’—sense of belonging).



At the same time, I want to set expectations clearly going forward: our commitment to diversity, equity, and inclusion is not going to take the form of having the school administration announce institutional positions on a wide range of current social and political issues, make frequent institutional statements about current news events, or exclude or condemn speakers who hold views on social and political issues with whom some or even many in our community disagree. I believe that focus on these types of actions as the hallmark of an “inclusive” environment can lead to creating and enforcing an institutional orthodoxy that is not only at odds with our core commitment to academic freedom, but also that would create an echo chamber that ill prepares students to go out into and act as effective advocates in a society that disagrees about many important issues. Some students might feel that some points should not be up for argument and therefore that they should not bear the responsibility of arguing them (or even hearing arguments about them), but however appealing that position might be in some other context, it is incompatible with the training that must be delivered in a law school. Law students are entering a profession in which their job is to make arguments on behalf of clients whose very lives may depend on their professional skill. Just as doctors in training must learn to face suffering and death and respond in their professional role, lawyers in training must learn to confront injustice or views they don’t agree with and respond as attorneys.

One can quibble with some aspects of Dean Martinez’s “next steps”—especially the decision not to discipline anyone who violated Stanford’s anti-disruption policy—but her memo is the strongest exposition of free-speech values that we’ve seen from a university official in this critical period.

Wherever deans and presidents stand up for free speech and the core truth-seeking mission of any academic institution, the mob disperses, but most university officials are careerist bureaucrats. The problem isn’t that deans like Treanor and Gerken are woke radicals. It’s that they’re spineless cowards who are unwilling to confront the illiberal inmates who have taken over their institutions—including as fellow administrators in burgeoning DEI offices. Mere statements about academic freedom and declining to fire Supreme Court justices aren’t enough; schools have to affirmatively instill a culture of respect for opposing views and civil discourse.

It also means dismantling bureaucracies that undermine the liberal values of free speech and due process—the DEI offices superfluous to and at war with Dean Martinez’s above description of diversity, equity, and inclusion—and it means ending compelled speech or loyalty oaths in the form of diversity statements.<sup>7</sup> University presidents and law school deans are very good at instilling whatever values they care about: public service, inclusion, social-justice, entrepreneurship, whatever. (They used to care about excellence and academic rigor, but according to Stanford, those terms are now racist triggers.<sup>8</sup>) They can do the same for free speech, as the University of Chicago regularly does and as Dean Martinez has now set out to do.

When I left Georgetown, I wasn’t holding my breath at the prospect of reform, but perhaps now we’re finally seeing a backlash against our illiberal inquisitors. But it can’t all be done from within, so we need external controls from state legislators and attorneys general, as well as congressional oversight tied to federal funding. You can absolutely require all recipients of federal

<sup>7</sup> See Christopher F. Rufo, Ilya Shapiro, and Matt Beienberg, “Abolish Bureaucracies and Restore Colorblind Equality in Public Universities,” Manhattan Institute Issue Brief, January 2023, <https://bit.ly/3Z8TkKp>.

<sup>8</sup> Editorial, “The Stanford Guide to Acceptable Words,” *Wall Street J.*, Dec. 19, 2022, <https://on.wsj.com/3FHNfF6>.



higher-ed funds to certify that they will not violate the Constitution, for example, and that they will comply with the codified sense of Congress regarding the protection of student speech and association rights,<sup>9</sup> just as they certify compliance with a host of other rules and requirements. To quote the late Dr. Mike Adams, who testified at a similar hearing nearly five years ago:

Each of you has taken an oath to uphold the Constitution. You can take a great step toward fully honoring that oath by withholding federal funding from public universities that are engaged in a war against our basic constitutional principles. Only then will these institutions live up to the ideal of being a “marketplace of ideas” where all viewpoints are truly welcomed and debated.<sup>10</sup>

We also need exogenous shocks like the boycott of Yale for clerk-hiring by 14 judges, led by Fifth Circuit Judge Jim Ho. And we need public exposure: the day after the *Wall Street Journal* published John Sailer’s exposé of how Texas Tech used job applicants’ diversity statements as ideological litmus tests, the university announced it would end its use of such statements for faculty hiring.<sup>11</sup>

There’s still a long way to go before universities return to their mission of seeking truth and knowledge, and law schools return to their goal of teaching future lawyers to uphold the rule of law. But the battle has been joined.

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<sup>9</sup> 20 U.S.C. § 1011a (Pub. L. 89–329, title I, § 112, as added Pub. L. 105–244, title I, § 101(a), Oct. 7, 1998, 112 Stat. 1591; amended Pub. L. 110–315, title I, § 104, Aug. 14, 2008, 122 Stat. 3090).

<sup>10</sup> “The State of Intellectual Freedom in America,” testimony of Dr. Mike S. Adams before the House Judiciary Committee’s Subcommittee on the Constitution and Civil Justice, prepared June 21, 2018, and delivered Sept. 27, 2018, <https://bit.ly/3JimgKD> (written text on file with author).

<sup>11</sup> John D. Sailer, “How ‘Diversity’ Policing Fails Science,” *Wall Street Journal*, Feb. 6, 2023, <https://on.wsj.com/404x1Oz>; “Texas Tech Reverses DEI Statement Requirement after Biology Dept. Featured in WSJ Piece,” KCBD, Feb. 8, 2023, <https://bit.ly/42x4liD>.

Chairman OWENS. Thank you so much. Under Committee Rule 9, we will now question the witnesses under the 5-minute rule. I will begin this process. Ms. Trump, the title of this hearing is Diversity of Thought, Protecting Free Speech on College Campuses. As we have heard today, universities and their administrators are increasingly focused on diversity, but only diversity in a narrowly defined way.

We have seen a startling lack of philosophical diversity, in some ways college administrators should promote more aspects of diversity such as viewpoint diversity with the students. Do you agree with that premise?

Mrs. TRUMP. That universities should promote more viewpoint diversity? Absolutely. Yes.

Chairman OWENS. Yes.

Mrs. TRUMP. There are ways to do it you know, the universities could actually teach students about viewpoint diversity, which is something they often leave out of their freshman orientation materials, or often do not require students to discuss in the classroom.

A lot of universities actually mandate that students take DEI classes, diversity, equity, inclusion classes in order to graduate, which often will talk about anti-racism, trigger warnings, social movements, but they usually will leave out any kind of viewpoint diversity or free speech conversation.

That is usually not a mandated requirement in order to graduate. The first step would be for universities to actually start trying to enforce this, because administrators really do paint the environment and paint the picture on the campus. You can see a lot of examples for what the administrators believe, and what their political agendas are affecting and influencing students.

Often times you will see something like what we saw at Colorado State University, where they demonized the concept of free speech by having a sign that says if you, or someone you know, has experienced a free speech event, then here are 17 counseling services we can provide you for.

This is clearly when students, when universities are not prioritizing these concepts, students are not going to prioritize them either.

Chairman OWENS. Very good. Thank you so much. Mr. Shapiro, in an instance such as the school—I am sorry, instances such as what happened at Stanford University, animosity among young people to what our country's founding principles. You described the actions of DEI staff as enforcing orthodoxy that stifles intellectual diversity, and denies equal opportunity, and excludes dissenting voices.

From your perspective, how is the increasing prevalence of these DEI beliefs impact student's likelihood that they will fully embrace the principles of free speech?

Mr. SHAPIRO. The way that these DEI bureaucracies indoctrinate false values, a sense of those magic words DEI, puts them in tension with speech, which they need not be, as Suzanne explained, or as the letter from Stanford Law Dean Jenny Martinez explained, how free expression, civil discourse is essential if we actually want appreciation for diversity and inclusion and all of those good things.

The problem is these post-modern theories about restructuring society along different social hierarchies, dismantling structures, oppressor and oppress classes, all of these weird things that have migrated back all of a sudden, subvert the classical values of speech, civil discourse, due process and everything else that we are supposed to believe in, not just in higher ed, but in America more broadly.

Chairman OWENS. Okay. How has the university setting tending to influence our culture at large?

Mr. SHAPIRO. Yes. We used to think that what happens on campuses, well that is just those crazy kids. Once they grow up they will be exposed to the real world, things are going to change. Well, as I discussed in the Wall Street Journal weekend interview that dropped last night, all of a sudden these students are growing up and occupying positions in society all over the place.

You know, I focus most on law schools, and that is really alarming because those are the gatekeepers of our political and legal institutions of the future, the Federal judges, the corporate suites, and legal offices. If they do not believe the ideas that they do not like are worthy of hearing, then our society, our whole constitutional order is lost.

Chairman OWENS. Thank you. I appreciate that. I now recognize Ranking Member Scott for his questions for the witnesses.

Mr. SCOTT. Thank you. Thank you, Mr. Chairman. Mr. Joner, who—you mentioned the situation that happened at a law school. What was the official response from the law school to the Dean's behavior?

Mr. JONER. Thank you, Congressman. President Tessier-Lavigne and Stanford, President of Stanford University, and Stanford Law School Dean Jenny Martinez issued an apology to Judge Duncan a few days after the incident occurred. I commend the apology, and I think it was a well written response.

Then just a few days ago, about a week ago, Dean Martinez released a ten page letter to the Law School and the greater public at large that apologized for the incident, and talked about how they were going to—committed herself to free speech, and I commend her letter. I thought it was excellent.

Mr. SCOTT. Was she suspended?

Mr. JONER. Yes. The Dean is currently on leave.

Mr. SCOTT. That was the official response from the university. Ms. Nossel, is there a difference between unruly students and State policy?

Ms. NOSSEL. Thank you, Congressman. Yes there is, and that is what we are—excuse me, there is a major difference, and that is what concerns me so much. You know, we can agree on this panel on many of the same concerns about lack of grounding among students and principles of the First Amendment and freedom of speech, the need to educate them, the need to reinforce the idea that diversity, equity, inclusion need not, and most not be at odds with robust protections for free speech.

The minute you insert the heavy hand of the State that you resort to statist solutions, and that legislation into the realm of the university, a realm that I think we all agree should be the zone of scholarship of free inquiry, where we want faculty. We are talking

about the importance of tenure that faculty be protected from reprisal.

To enact legislation that cordons off certain concepts that says this may not be taught, if you venture into this, you may get into trouble, you maybe face discipline. That, to me, as an American, honestly, is very dangerous. That is the kind of tactic that we see in repressive countries around the world where there is no buffer zone between the hand of the State, and what happens on a university campus.

In our system we have faculty, we have university leadership that creates that zone of protection for the free flow of ideas. We are not under the thumb of government at American universities. Look, I think we agree to a large degree on the diagnosis of the problem, and the question really becomes what is the solution? Is the solution, you know, here in the United States of America, with our First Amendment where we stay the hand of government when it comes to the realm of ideas, are we really going to break with that, and endorse legislation to try to adjudicate what can and can't be said on campus?

I think that is a very dangerous route to go down, and we have already talked about better solutions including training and the reinforcement of policies that can uphold the value of free speech on campus without departing from the First Amendment.

Mr. SCOTT. Now, do these laws that have passed limiting what can be taught, and that kind of thing, does that have a partisan tinge to it? Does it have a partisan tinge to it?

Ms. NOSSEL. It does. You know that is a serious concern, a principle is not a principle if it is not applied to all equally. To pick out and cherry pick certain ideas, certain course materials, certain theories and say these are out of bounds, that is the core of what the First Amendment protects and gets. Viewpoint based discrimination, the notion that the government would be listing out particular topics, subjects of discussion, aspects of a curriculum, and saying that these are out of bounds.

You may—some here in this room may endorse what is on those lists today, but what is going to be on those lists tomorrow?

Mr. SCOTT. Does that have a partisan tinge to it, republican or democrat?

Ms. NOSSEL. It is republican legislatures across the country that have enacted these laws and tabled these proposals. I am not aware of any proposal emanating from democratic legislators.

Mr. SCOTT. Thank you. Is it possible for unchecked freedom of speech to create a hostile environment in violation of Title VI?

Ms. NOSSEL. Can unchecked freedom of speech create a hostile environment? No. What creates a hostile environment is discriminatory harassment, yes, that can be the origin of hostile environment. It typically requires action, not just speech.

Mr. SCOTT. Thank you.

Chairman OWENS. Thank you. I would like to now recognize the Congresswoman from Indiana.

Ms. HOUCHIN. Thank you, Mr. Chairman. Thank you to the witnesses for being here today. I am a mom of a college freshman with two teenagers getting ready to prepare for college. I am certainly glad that this committee is considering this important topic. Free

speech on college campuses where students should have the opportunity to think out loud, voice opinions, that is very important.

Indiana has nearly 60 colleges and universities across the State, including Indiana University in my district. I am certainly very interested in this conversation. One thing I have heard from some students, they are fearing speaking out about their true opinions in the papers that they write for professors. In the things that they say in class.

One conservative student who attends a university in Indiana, not IU, a school in Indiana, commented that he was not about to expose himself as a conservative to his professors for fear that his grades would suffer, and that would somehow impact his future, so that is something I am really concerned about.

Another concern is when we were touring colleges, we visited a school that had 200 student groups, and not a single conservative group among them. That leaves no opportunity for conservative students to organize. Some of the issue may be that there is not a professor willing to sponsor a conservative group on campus.

We hosted a series of roundtables earlier this month. We discussed this faculty sponsor requirement for students to form new groups on campus. I would hate to think that there are these barriers for students to convene and organize. Do you think Ms. Trump, is this an issue that would rise to the level of discrimination of these student groups if they are unable to organize for lack of a sponsor?

Mrs. TRUMP. On some of the stuff that you said earlier with regards to the fear that students are feeling, being able to express their political viewpoints, that is why these clubs, these conservative clubs are actually so vital and important to students when they do want to speak out about some of their viewpoints and ideas.

I think it is really important to recognize that the fear is pretty widespread on campuses. Faculty members have told me that they intentionally do not include open discussion in their classrooms anymore because they are afraid they might have to step in and make a comment. Students have told me on the same vein of what you mentioned earlier, a Texas student told me that he does not wear cowboy boots to class because that is associated with conservatives.

He knows that if his professor found out he was a conservative, he fears that he would have retaliation, via his grades. There is a serious concern, and I can keep going on various examples, but to answer your question more directly about whether this is viewpoint discrimination.

The policies that are in place on campuses that are creating these environments are in the vein of viewpoint discrimination. Most students and professors are afraid to associate themselves with conservative organizations, so they often times will go to these meetings in secret, and professors are usually unwilling to be faculty advisers for clubs, which is usually a requirement.

That is something that once a university starts to be more open toward various viewpoints, and stop discriminating, then maybe you are going to get more conservative professors who are willing to represent these clubs.

Ms. HOUCHIN. Thank you. To Mr. Shapiro, one of the things that we have also discussed is whether this committee should consider a student's bill of rights. We have just passed the Parent's Bill of Rights, where we would reaffirm a student's freedom of speech rights on campus. I want to thank you for your work at the Manhattan Institute.

You said something in your written testimony that I want to highlight here. The problem goes far beyond speech on campus, worrying as developments here are for the next generation. It is even more important to have a national reckoning about our inability to discuss controversial issues without canceling those with whom we disagree.

I certainly could not agree more. I think it has been a common theme that many on the right have been willing to go and have those debates where you do not have the same engagement from our counterparts on the left. You mentioned jokingly, maybe engaging with Whoopi Goldberg on Joe Rogan.

I am wondering has she taken you up on that yet?

Mr. SHAPIRO. She has not, alas. The offer is still open, or maybe Bill Maher, if you are listening, I would be happy to go on your show to talk about this stuff. Look, there is absolutely a role for Congress here, and especially for State legislatures, particularly with respect to public institutions. It is not that any legislation in this area is a slippery slope to authoritarianism.

You can absolutely require recipients of higher ed funds to certify they will not violate the Constitution. They will preserve the already codified sense of Congress to protect student speech and freedom of association.

Ms. HOUCHIN. Thank you. I yield back.

Chairman OWENS. Thank you. I would like to now recognize Congressman Takano.

Mr. TAKANO. Thank you, Mr. Chairman. Ms. Nossel, I read in your statement that you said, "We've decried student protests that went too far, such as at Yale, Stanford, and Georgetown." I am assuming the Stanford reference is the same incident that happened at Stanford that Mr. Joner was speaking of?

Ms. NOSSEL. Yes. That is right.

Mr. TAKANO. You regard that as an incident, as a protest that went too far.

Ms. NOSSEL. Yes. I think it was an attempt at exercise of a heckler's veto, and I think the administration did not perform its proper responsibility to ensure that this invited speaker was given the opportunity to express his views, and that those who came to hear him had a chance to do so.

You know, that for us is a free speech organization's concern.

Mr. TAKANO. Based on Mr. Joner's testimony I would agree with you, and I would agree that universities must be protected zones with buffers all around them, so that they are true places of inquiry, where freedom of thought and a diversity of opinion can exist.

Let me switch, let me kind of go to a related topic, I noticed that you have an expertise in human rights, Amnesty International, Human Rights Watch, that you have done a lot of research specific to Hong Kong and China, free speech issues. Is it fair to say that

the political authorities, or the politicians, or the political authorities in China have the ability to impose a curriculum in institutions of higher ed?

Ms. NOSSEL. Absolutely. The State controlled institutions. In Hong Kong, traditionally, there was a long tradition of academic freedom, and those universities were globally respected, and there were exchanges of scholars from around the world. That really has changed. It is kind of a free setting in with the passage of the National Security Law and the imposition of a much stronger hand from Beijing.

That kind of leeway in Hong Kong to talk about issues like press freedom, human rights, and dissent has diminished.

Mr. TAKANO. There was a before the basic law, when the basic law was in effect, the democratic institutions were strong, more robust freedom of inquiry at universities, basic law has been undermined. The CCP of China asserts its dominance in Hong Kong and you just described what happened at the universities.

What kind of affect did this have on the students and the professors at Chinese universities in Hong Kong?

Ms. NOSSEL. Yes. It is chilling. Some professors have left. They do not want to teach in that kind of environment. Others have had to change their curriculum. Courses have been decommissioned, because it is risky to take a stance, publish an article, talk about something in class that might fall afoul of the Beijing authorities.

We know where this leads. I will never forget just very briefly, meeting a young, very well educated Chinese student who had said he had never heard of the Tiananmen Square massacre until he was in his 20's because that information was so sharply repressed. That is not what we want here.

Mr. TAKANO. Okay. Well great. Are you able to draw any comparisons between what you witnessed in Hong Kong and globally, to what you are seeing now transpire under Governor DeSantis in Florida, and the republican legislature.

Ms. NOSSEL. I do not want to overstate it, I think it is really important to recognize that there are clear distinctions, and we remain a free country. We are having this hearing. We can discuss these issues, but I do—I am concerned about this legitimization of the intervention of the State, and the idea that legislation, even if it is sort of loyalty oaths to the Constitution.

That is not a tactic that we are comfortable with in this country.

Mr. TAKANO. Well more specifically, I am a former community college trustee. I was elected as trustee. I do not recall ever inserting myself, or the board asserting itself into the curriculum that was being taught, but that was the province of the academic Senate, and the subject matter experts. Is that kind of a fair description of how things work in higher education?

Ms. NOSSEL. Absolutely. I mean we have the idea that academic freedom requires universities to be able to, you know, it is described as the Supreme Court as you know, the four freedoms of being able to choose what is taught, who taught, who teaches it, how it is taught, and who the students are. The minute we intrude on that, we lose the independence and the strength of the university.

Mr. TAKANO. Well, you know, Governor DeSantis himself, and they have inserted themselves into a public university replacing all the trustees, and encouraging the adoption of a conservative curriculum based on the Hillsdale College of Florida. Is this something that you find disturbing?

Ms. NOSSEL. I find it chilling that in this country they would dismantle the autonomy of public university, and take it over in that way;

Mr. TAKANO. Thank you and I yield back.

Chairman OWENS. Thank you. I would like to now recognize the Chair, the Chairwoman of the full committee, Ms. Foxx.

Mrs. FOXX. Thank you, Mr. Chairman, and I thank our witnesses for being here today. Mr. Shapiro, one of the most important lessons I learned as a college President, was the importance of institutional neutrality. Institutions should maintain a welcoming environment for all speech. What happens to our students and faculty when colleges selectively pick and choose speech to support? Is your mic on? Pull your mic up to you if you do not mind.

Mr. SHAPIRO. Yes. I appreciate that question, Chairwoman Foxx. It is an important one because when universities, or any unit of the university takes a position on a controversy, that chills speech of students or faculty who might disagree on that position. That is why the gold standard for this sort of thing, the University of Chicago's Calvin report recommends, and Chicago adopted, not taking any sorts of institutional positions.

When something arises, they do not have to decide oh, are we going to weigh in on this, or we are being pressured by both sides, how should we massage it? They can just say we are not in the business, we are in the business of education, we are not in the business of political punditry.

Mrs. FOXX. As a followup, how does this harm the role universities should play in society when they pick and choose?

Mr. SHAPIRO. Yes. It transforms the university into an advocacy group on political controversy, not about its own interests, rather than detracting it—distracting it from its mission of seeking truth, educating students, creating knowledge.

Mrs. FOXX. Well, thank you very much, and thank you very much for the work that you are doing every day. I really appreciate it. Mrs. Trump, the legal advocacy work at Speech First shows how necessary it still is to combat violations of free speech. I believe it is important to hold institutions accountable.

This committee has thought long and hard on how to appropriately balance Federal policy. Do you believe Congress has a role to play in ensuring colleges maintain free speech environments?

Mrs. TRUMP. Yes. Congress does have a role to play because a lot of these universities receive Federal funding, and so it is—the onus is on Congress a lot of times to actually make sure that these institutions are protecting the rights of the students that are going to these schools, especially Federal and publicly funded schools.

Additionally, if the Department of Education is enforcing policies, and putting policies into place that are violating students first amendment rights, then Congress has a role to investigate what is going on at the Department of Education, and why they feel the need to do that.



There is a lot of definitions under Title 9 and Title 6 of harassment and discrimination that are ever changing with every administration. It would be wonderful if Congress could codify some of these definitions.

Mrs. FOXX. I love the Constitution, and it seems to me it is pretty firm on what it says. Yes, I believe you are right. We have a role to play here although it is a very delicate role to play. Mr. JONER, I passionately believe that colleges and universities should prepare students to be lifelong learners. It is important to graciously engage with ideas and people with whom you disagree.

As we have seen from today's testimoneys, institutions are not promoting this key part of learning. Based on your perspective as a current student, how can colleges better equip the next generation to value free speech?

Mr. JONER. Congresswoman, thank you for the question. What I have seen on campus is that after incidents like this at Stanford Law School, and other incidents across the country, is that stifling free speech in our classrooms, that both conservatives and liberal students do not feel comfortable to speak out.

It is an exiled debate into those other rooms, and in order to enforce this, we need to have university administrators who are in place, force the basic principles of free speech, and make sure that students are respecting these. What we have seen is that administrators at Stanford Law School, just a couple weeks ago, were not doing their job to enforce the principles of free speech, and the university's own policies on free speech.

Mrs. FOXX. Thank you very much, again to our witnesses for being here today. This is an extremely important topic on the minds of Americans, on the minds of college students. I think it is important that we have held this hearing. Thank you, Mr. Chairman. I yield back.

Chairman OWENS. Thank you. I would like to recognize Mr. Takano to enter some materials into the record.

Mr. TAKANO. Mr. Chairman, thank you. I would like to enter into the record this memo by Jenny S. Martinez of the Richard E. Lang Professor of Law and Dean of Stanford Law School that the issue that she issued in response to the incident.

Chairman OWENS. No objection.

Mr. TAKANO. Thank you.

[The information of Mr. Takano follows:]

Jenny S. Martinez  
Richard E. Lang Professor of Law  
and Dean of Stanford Law School

Crown Quadrangle  
559 Nathan Abbott Way  
Stanford, CA 94305-8610  
Tel 650.723.4455  
jmartinez@law.stanford.edu

March 22, 2023

Dear SLS Community,

As my message to you last week indicated, I had hoped to wait until after final exams concluded at the end of this week to offer any further comments on the disruption of Judge Kyle Duncan's speech at a student Federalist Society event on March 9, 2023, and the school's response to that disruption. However, continuing outside attention to these events, as well as the volume of hateful and even threatening messages directed at members of our community, have led me to conclude that a more immediate statement is necessary.

As we consider the role of respectful treatment of members of our community, I want to be clear that the hate mail and appalling invective that have been directed at some of our students and law school administrators in the wake of March 9 are of great concern to me. All actionable threats that come to our attention will be investigated and addressed as the law permits.

In the message below, I respond below to many of the questions I continue to receive about why I apologized to Judge Duncan, why I stand by that apology, and why the protest violated the university's policy on disruption. I articulate how I believe our commitment to diversity and inclusion means that we *must* protect the expression of all views. And, I outline some of the steps the school will be taking in the wake of this incident, including the adoption of clearer protocols for managing disruptions and educational programming on free speech and norms of the legal profession.

This message is unusually lengthy; because we are a law school and these issues are core to our educational mission, I explain some of my reasoning in quite a bit more detail than I would for a general audience. I also recognize that what I share below will not please everyone. While some of you may disagree with my views, I look forward to continuing the conversation about how we can create a learning environment that both respects freedom of speech and ensures that we support all of our diverse community members on their path to becoming lawyers.

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**I. Academic Freedom, Free Speech, and Protests on University Campuses: Protest is Allowed but Disruption is Not Allowed**

My response is informed by basic principles. First, Stanford's Statement on Academic Freedom adopted by the faculty Senate in 1974 provides:

Stanford University's central functions of teaching, learning, research, and scholarship depend upon an atmosphere in which freedom of inquiry, thought, expression, publication and peaceable assembly are given the fullest protection. Expression of the widest range of viewpoints should be encouraged, free from institutional orthodoxy and from internal or external coercion.

Second, while the First Amendment is designed to protect speech from government restriction, and therefore is not directly applicable to Stanford as a private institution, California's Leonard Law, Cal. Educ. Code § 94367, prohibits private colleges from making or enforcing rules subjecting students to discipline on the basis of speech that would be protected by the First Amendment or California Constitution if regulated by a public university. Some students have argued that the disruptive protest of the event was itself constitutionally protected speech. Of course, protests are in some instances protected by the First Amendment, but the First Amendment does not give protestors a "heckler's veto." As First Amendment scholar Dean Erwin Chemerinsky has written, "Freedom of speech does not protect a right to shout down others so they cannot be heard." Erwin Chemerinsky & Howard Gillman, *Free speech doesn't mean hecklers get to shut down campus debate*, WASH. POST (Mar. 24, 2022), <https://www.washingtonpost.com/opinions/2022/03/24/free-speech-doesnt-mean-hecklers-get-shut-down-campus-debate/>.

To the contrary, settled First Amendment law allows many governmental restrictions on heckling to preserve the countervailing interest in free speech. As the California Supreme Court stated in *In re Kay*, 464 P.2d 142, 149 (Cal. 1970), "the state retains a legitimate concern in ensuring that some individuals' unruly assertion of their rights of free expression does not imperil other citizens' rights of free association and discussion." Thus, even in public forums such as the public streets, sidewalks, and parks, where free speech rights have greatest latitude, it is well-settled that the First Amendment allows the imposition of reasonable content-neutral time, place, and manner restrictions. See, e.g., *Frisby v. Schultz*, 487 U.S. 474, 487-88 (1988).

And while the First Amendment bars regulation of speech on the ground that listeners might find its *content* disturbing, see *Terminiello v. Chicago* 337 U.S. 1, 3 (1949) (invalidating a law treating speech as a breach of the peace if it "stirs the public to anger, invites dispute, brings about a condition of unrest, or creates a disturbance"), the First Amendment permits the regulation of speech that "*substantially impairs the effective conduct of a meeting*." *In re Kay*, 464 P.2d at 150 (emphasis added). Thus, while the California Supreme Court in *In re Kay* protected protestors speaking out against an elected official at "a large, public

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celebration held outdoors in a public park,” the Court noted that “the nature of a meeting necessarily plays a major role,” and that “customs and usages” are central to the analysis. *Id.*

For these reasons, modern First Amendment law does not treat every setting as a public forum where a speech free-for-all is allowed. To the contrary, First Amendment cases have long recognized that some settings are “limited public forums,” where restrictions on speech are constitutional so long as they are viewpoint-neutral and reasonable in light of the forum’s function and all the surrounding circumstances. See *Christian Legal Soc. Chapter of the Univ. of Cal., Hastings College of the Law v. Martinez*, 561 U.S. 661, 679 (2010); *Arkansas Educ. Television Com’n v. Forbes*, 523 U.S. 666, 676-78, 688 (1998). As Justice Ginsburg cautioned in a prominent case, such speech restrictions may be especially reasonable “in the educational context,” which requires “appropriate regard for school administrators’ judgment” in preserving a university’s mission and advancing academic values. *Christian Legal Soc.*, 561 U.S. at 685, 687. A university classroom setting for a guest speaker invited by a student organization is thus a setting where the First Amendment tolerates greater limitations on speech than it would in a traditional public forum.

The “nature of a meeting” in an indoor university classroom, under settled First Amendment law, does not countenance the same sort of “prolonged, raucous, boisterous demonstrations” that might be acceptable at an outdoor rally, see *In re Kay*, 464 P.2d at 150. Rather, different “customs and usages” apply in a setting like a planned lecture in a reserved room on campus. In such a setting, limiting audience participation to signs, questions during a planned Q&A, and a non-disruptive level of audience reaction is appropriate to the nature of the forum. Stanford’s event disruption policy gives attendees a right to hold signs and to demonstrate disagreement in other ways as long as the methods used do not “prevent or disrupt the effective carrying out of a University function or approved activity, such as lectures, meetings, interviews, ceremonies. . . and public events.”<sup>1</sup> Moreover, students are encouraged to hold alternative events where they can share their own views without disrupting the invited speaker. Stanford’s policy is thus fully consistent with the First Amendment and long-settled California constitutional law.

Moreover, a university is not just a platform for speech but is itself a speaker with its own First Amendment rights and prerogatives to edit the message it conveys to its students and the world, including messages about the importance of free speech. See *Sweezy v. State of New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) (“It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail ‘the four essential freedoms’ of a university—to determine for itself on academic grounds who may teach, what

<sup>1</sup> Stanford Univ., *Campus Disruptions*, <https://studentservices.stanford.edu/more-resources/student-policies/student-rights-responsibilities/campus-disruptions>, (last visited Mar. 17, 2023) (noting “the application of the Policy also takes situational factors into consideration” and “[t]hus, for example, conduct appropriate at a political rally might constitute a violation of the Policy on Campus Disruptions if it occurred within a classroom.”).

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may be taught, how it shall be taught, and who may be admitted to study.””). A university’s free speech and campus disruption policy is an important component of such academic freedom.

Some of the protestors at last week’s event stayed within the bounds of permissible, non-disruptive counter-speech, while others crossed the line in sustained heckling that disrupted the event. Some students contend that the judge invited the heckling with offensive comments or engagement with protestors. These arguments misunderstand the nature of the disruption policy. The policy would not be meaningful to protect the carrying out of public events and the right of attendees to hear what is said if it applied only when a speaker said things protestors in an audience found agreeable. Nor does the fact that the speaker departs from their planned remarks and engages with the hecklers justify further heckling that disrupts the event. The Stanford disruption policy prohibits not just conduct that literally drowns out the speaker, but also that which “disrupt[s] the *effective* carrying out” of the event (emphasis added).

The President of the University and I have apologized to Judge Duncan for a very simple reason – to acknowledge that his speech was disrupted in ways that undermined his ability to deliver the remarks he wanted to give to audience members who wanted to hear them, as a result of the failure to ensure that the university’s disruption policies were followed. That apology, and the policy it defends, is fully consistent with the First Amendment and the Leonard Law.

## II. Academic Freedom, Free Speech, DEI, and the Role of University Administrators

The university’s commitment to diversity, equity, and inclusion can and should be implemented in ways that are consistent with its commitment to academic freedom and free speech. See Marc Tessier-Lavigne and Persis Drell, *Advancing free speech and inclusion*, (Nov. 11, 2017), <https://quadblog.stanford.edu/2017/11/07/advancing-free-speech-and-inclusion/>. Indeed, for the reasons explained below, I believe that the commitment to diversity, equity, and inclusion actually means that we *must* protect free expression of all views.

The Federalist Society has the same rights of free association that other student organizations at the law school have. Students calling for the law school administration to restrict the organization or the speakers it can bring to campus are demanding action inconsistent not only with freedom of speech but with rights to freedom of association that civil rights lawyers fought hard in the twentieth century to secure. To do so would also be inconsistent with the Stanford Statement on Academic Freedom’s requirement that “[e]xpression of the widest range of viewpoints should be encouraged, free from institutional orthodoxy and from internal or external coercion.” Unless we recognize that student members of the Federalist Society and other conservatives have the same right to express their views free of coercion,

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we cannot live up to this commitment nor can we claim that we are fostering an inclusive environment for all students.

Enforcement of university policies against disruption of speakers is necessary to ensure the expression of a wide range of viewpoints. It also follows from this that when a disruption occurs and the speaker asks for an administrator to help restore order, the administrator who responds should not insert themselves into debate with their own criticism of the speaker's views and the suggestion that the speaker reconsider whether what they plan to say is worth saying, for that imposes the kind of institutional orthodoxy and coercion that the policy on Academic Freedom precludes. For that reason, I stand by my statement in the apology letter that at the event on March 9, "staff members who should have enforced university policies failed to do so, and instead intervened in inappropriate ways that are not aligned with the university's commitment to free speech."

The [1967 Kalven Report](#) of the University of Chicago is not formal policy at Stanford but helps explain why university administrators should avoid exercising their authority in ways that can chill speech. It states:

A university has a great and unique role to play in fostering the development of social and political values in a society. The role is defined by the distinctive mission of the university and defined too by the distinctive characteristics of the university as a community. It is a role for the long term.

The mission of the university is the discovery, improvement, and dissemination of knowledge. Its domain of inquiry and scrutiny includes all aspects and all values of society. A university faithful to its mission will provide enduring challenges to social values, policies, practices, and institutions. By design and by effect, it is the institution which creates discontent with the existing social arrangements and proposes new ones. In brief, a good university, like Socrates, will be upsetting.

The instrument of dissent and criticism is the individual faculty member or the individual student. The university is the home and sponsor of critics; it is not itself the critic. It is, to go back once again to the classic phrase, a community of scholars. To perform its mission in the society, a university must sustain an extraordinary environment of freedom of inquiry and maintain an independence from political fashions, passions, and pressures. A university, if it is to be true to its faith in intellectual inquiry, must embrace, be hospitable to, and encourage the widest diversity of views within its own community.

It bears emphasizing that is *not* inconsistent with principles of academic freedom for the university administration to say that our LGBTQ+ students, faculty, and staff are valued members of our community of scholars. That goes to the basic norms of pluralism that



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underpin our operation as a university, in the same structural way that the normative commitment to free speech underpins those operations. Indeed, as the Stanford Faculty Senate reaffirmed in a resolution adopted on November 11, 2016, the university has a commitment to an “open and inclusive community that embraces all members, irrespective of race, ethnicity, religion, gender, gender identity, sexual orientation, citizenship, abilities and political views.” And so I say that firmly here as well, and defend the value and place of LGBTQ+ people in our community.

Moreover, there are many ways to support diversity, equity, and inclusion that are not inconsistent with a commitment to academic freedom. For example, as an educational institution dedicated to training future lawyers, we support diversity, equity, and inclusion by encouraging thoughtful and critical discourse about the law and legal system, by training students to offer substantive critiques of injustice that they encounter, by teaching future lawyers how to marshal evidence that supports their point of view and how to make arguments that convince others. We support diversity, equity, and inclusion when we encourage people in our community to reconsider their own assumptions and potential biases. We support diversity, equity, and inclusion when we encourage students to connect with and see one another as people. We support diversity, equity, and inclusion when we teach each and every one of our students how to be the best possible lawyer they can be, and take those skills of advocacy out into the world.

At the same time, I want to set expectations clearly going forward: our commitment to diversity, equity, and inclusion is not going to take the form of having the school administration announce institutional positions on a wide range of current social and political issues, make frequent institutional statements about current news events, or exclude or condemn speakers who hold views on social and political issues with whom some or even many in our community disagree. I believe that focus on these types of actions as the hallmark of an “inclusive” environment can lead to creating and enforcing an institutional orthodoxy that is not only at odds with our core commitment to academic freedom, but also that would create an echo chamber that ill prepares students to go out into and act as effective advocates in a society that disagrees about many important issues. Some students might feel that some points should not be up for argument and therefore that they should not bear the responsibility of arguing them (or even hearing arguments about them), but however appealing that position might be in some other context, it is incompatible with the training that must be delivered in a law school. Law students are entering a profession in which their job is to make arguments on behalf of clients whose very lives may depend on their professional skill. Just as doctors in training must learn to face suffering and death and respond in their professional role, lawyers in training must learn to confront injustice or views they don’t agree with and respond as attorneys.

Law is a mediating device for difference. It therefore reflects all the heat of controversy, all the pain and suffering, and all the deeply felt moral urgency of our differences in position, power, and cherished principles. Knowing all of this, I believe we cannot function as a law school from the premise that appears to have animated the disruption of Judge Duncan’s

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remarks -- that speakers, texts, or ideas believed by some to be harmful inflict a new impermissible harm justifying a heckler's veto simply because they are present on this campus, raised in legally protected speech, and made an object of inquiry. Naming perceived harm, exploring it, and debating solutions with people who disagree about the nature and fact of the harm or the correct solutions are the very essence of legal work. Lively, candid, civil, and evidence-based discourse in disagreement is not just positive for our community, constituted as it is in difference, it is a professional duty. Observance of this duty matters most, not least, when we are convinced that others haven't.

Moreover, because of the special role of lawyers in our system of justice, lawyers are held to higher standards of professional conduct and interaction with one another than lay people. For example, the oath a lawyer takes upon becoming a member of the bar in California requires one to swear or affirm that they "will faithfully discharge the duties of an attorney and counselor at law to the best" of their "knowledge and ability" and "as an officer of the court," they "will strive to conduct" themselves "at all times with dignity, courtesy and integrity." This requirement is even more important, not less important, in the midst of heated controversy. And learning to channel the passion of one's principles into reasoned, persuasive argument is an essential part of learning to be an effective advocate.

There are fundamental issues to consider here beyond the issues of formal law and university policy. They have to do with choices for which all of us are responsible in building a community dedicated to learning and to preparation for the practice of law. With regard to the norms of this community, the cycle of degenerating discourse won't stop if we insist that people we disagree with must first behave the way we want them to. Nor will it stop if we try to shame each other into submission (shaming, the research shows, has precisely the opposite effect in communities constituted by difference). The cycle stops when we recognize our responsibility to treat each other with the dignity with which we expect to be met. It stops when we choose to replace condemnation with curiosity, invective with inquiry. I remain dedicated to cultivating these norms in our community.

There is temptation to a system in which people holding views perceived by some as harmful or offensive are not allowed to speak, to avoid giving legitimacy to their views or upsetting members of the community, but history teaches us that this is a temptation to be avoided. I can think of no circumstance in which giving those in authority the right to decide what is and is not acceptable content for speech has ended well. Indeed, the power to suppress speech is often very quickly directed towards suppressing the views of marginalized groups. We see this today, both around the United States and around the globe. And at key moments in history, robust protection for the rights of association and speech has been critical to the advance of social movements for historically marginalized groups. *See, e.g., Gay Students Organization of University of New Hampshire v. Bonner*, 509 F.2d 652 (1st Cir. 1974). Thus, I believe that strong protection for freedom of speech is a bedrock principle that ultimately supports diversity, equity, and inclusion and that we must do everything in our power to ensure that it endures.



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### III. Next Steps

In closing, I will address some issues that have been the subject of many inquiries from inside and outside the university,<sup>2</sup> and then I will discuss what steps the law school is taking to ensure that these events are not repeated.

First, Associate Dean Tirien Steinbach is currently on leave. Generally speaking, the university does not comment publicly on pending personnel matters, and so I will not do so at this time. I do want to express concern over the hateful and threatening messages she has received as a result of viral online and media attention and reiterate that actionable threats that come to our attention will be investigated and addressed as the law permits. Finally, it should be obvious from what I have stated above that at future events, **the role of any administrators present will be to ensure that university rules on disruption of events will be followed, and all staff will receive additional training in that regard.**

Second, with respect to the students involved in the protest, several factors lead me to conclude that what is appropriate here is **mandatory educational programming** for our student body rather than referring specific students for disciplinary sanction (which at Stanford is administered by the central university's Office of Community Standards and involves a deliberate process including fact-finding and hearings). My analysis here is informed by California's Leonard Law, which as discussed above legally prohibits Stanford University from imposing disciplinary sanctions on students for activity protected by the First Amendment. Measures targeting constitutionally unprotected speech raise concerns when implemented in a way that may chill constitutionally protected speech. *See, e.g., Laird v. Tatum*, 408 U.S. 1, 11 (1972) (noting that "constitutional violations may arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights."). As I have already explained at length above, the disruptive conduct of many students at the event was *not* protected by the

<sup>2</sup> A recording of the event was ordered in advance from the law school's audiovisual services department by the Federalist Society student organizers, who agreed to pay the standard fee for such a recording. It took several days after the event for the students to turn in a copy signed by Judge Duncan of the standard speaker release required by the school for all guest speakers being recorded. That has now been received and the recording is being released to the students who ordered it. Because of the public nature of the event, students in the room did not have a reasonable expectation of privacy and there are many cell phone recordings as well as an audio recording of the event already circulating. Given the vitriolic and threatening emails and social media postings that have been directed at students based on the viral spread of online stories about this event, however, we have determined that protection of those students from threats in the current environment suggests that blurring the faces of students in the audience who appear on camera in the video is appropriate for the release of the official video at this time (given the camera angle focused on the podium, most of the audience is not visible and the blurring occurs only at two short passages at minutes 21:00 and 28:45 in the recording). Although the students are identifiable in cell phone videos and photos circulating online, given that the license for use of this recording belongs to the University itself for "educational purposes" pursuant to the standard speaker release, we believe that the university's relation to its students makes the blurring of faces appropriate.

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First Amendment. There were easily a hundred students in the room, however, and some individual students crossed the line into disruptive heckling while others engaged in constitutionally protected non-disruptive protest, such as holding signs or asking pointed questions. Even if we could come up with a fair process for identifying and distinguishing between the two categories of students consistent with First Amendment values, the particular circumstances of this event raise additional concerns. Given the sometimes uncertain boundary between permissible audience reactions and impermissible disruptions at an event, “a warning and a request that defendants curtail their conduct” before proceeding to sanction can in some circumstances be important in preventing a constitutionally impermissible chilling effect on speech. *In re Kay*, 464 P.2d at 152. Such an onsite warning might not be required in all cases, and students had been generally informed of the policy against disruptions (including by schoolwide email the morning of the event). In this instance, however, the failure by administrators in the room to timely administer clear and specific warnings and instead to send conflicting signals about whether what was happening was acceptable or not (and indeed at one point to seemingly endorse the disruptions that had occurred up to that point by saying “I look out and say I’m glad this is going on here”) is part of what created the problem in the room and renders disciplinary sanction in these particular circumstances problematic.

Moreover, it is important to recall that the First Amendment bars regulation of speech on the ground that listeners might find its *content* disturbing, *see Terminiello*, 337 U.S. at 3. Under this standard, students could be sanctioned for interrupting the speaker with loud shouts, for example, but *not* for holding signs or asking questions (when called upon) that are offensive, vulgar, or provocative. Given this, focusing solely on punishing those who engaged in unprotected disruptions such as noisy shouting during the lecture would leave perversely unaddressed the students whose speech was perhaps constitutionally protected but well outside the norms of civil discourse that we hope to cultivate in a professional school. As a law school, it is within our educational mandate to address with students the norms of the legal profession with regard to, for example, offering substantive criticism of legal arguments and positions rather than vulgar personal insults, and the potential consequences for their professional reputations of such speech.

Accordingly, as one first step the law school will be holding a **mandatory half-day session** in spring quarter for all students on the topic of freedom of speech and the norms of the legal profession. A faculty committee will plan the session and invite speakers representing a range of viewpoints. Needless to say, faculty and students are free to disagree with the material presented in these sessions or with the arguments I have presented in this memorandum – there will be no orthodoxy on this topic either. But I believe further discussion of these topics will both advance our educational mission and help us learn from the errors of the recent past. In addition, the faculty committee I have constituted will solicit feedback from the faculty, students, and members of the bar including our alumni, and it will make further recommendations on how to improve constructive and inclusive discourse at the law school. More details on this committee will follow.

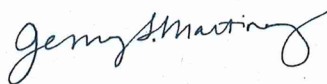
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In addition, a **more detailed and explicit policy with clear protocols for dealing with disruptions** would better protect the rights of speakers and also those who wish to exercise their right to protest within permissible bounds, and is something we will **seek to adopt and educate students and staff on going forward**. Cf., e.g., UC Hastings [now UC College of the Law San Francisco] Event Policy: Student Organization Support Protocol; Permissible Forms of Protest (Adopted October 1, 2022), available at <https://www.thefire.org/research-learn/uc-hastings-event-policy-adopted-october-1-2022>. Doing so will bring greater clarity and certainty about future enforcement of the policy, including through disciplinary sanctions as appropriate.

I also recognize that the protest originally grew out of a desire by students to bring greater attention to discussion of LGBTQ+ rights in the current legal environment. I have spoken with faculty whose scholarship and teaching gives them relevant expertise, and who will work with students to plan events in spring quarter to substantively engage on this topic. Such programming, rather than disruptive protests, better advances students' education as lawyers and advocates.

I recognize that the course I have chosen will not please everyone, not least of which those who have demanded that I retract my apology to Judge Duncan and those who have demanded that students be immediately expelled. But this is the course I believe best furthers our obligations as legal educators, charged with training future lawyers and preparing them to participate in a profession that undergirds the very fabric of our democracy and the rule of law.

Sincerely,

A handwritten signature in black ink, reading "Jenny S. Martinez". The signature is fluid and cursive, with the first name "Jenny" and last name "Martinez" clearly legible.

Jenny S. Martinez

Chairman OWENS. I would like now to recognize Ms.—Bonamici, I am sorry. Bonamici.

Ms. BONAMICI. Thank you so much to the Chair and Ranking Member. I agree with my colleagues on the other side of the aisle that it is important to protect free speech at public and private colleges around the country. Public colleges have a constitutional obligations, as we have heard, to uphold free speech on campus, and public and private colleges have a responsibility to provide each student with a higher education that is intellectually stimulating, challenges their world view, and exposes them to perspectives different from their own.

To my knowledge, the vast majority of colleges are upholding this obligation, this responsibility. I am deeply concerned about the academic censorship at all levels, and including in higher education that is being advanced by several republican leaders, especially at the State level.

Most recently, as our colleagues described, Florida republicans took steps to prohibit public colleges in the State from mentioning or working on anything related to diversity, equity, inclusion, and Mr. Chair, this is actual censorship. Silencing voices you do not agree with. I urge you and your colleagues to do some much needed introspection before distracting the American people from the real issues at hand, which is a systematic assault on democratic values, and increasing unaffordability of college.

I want to note that I agree with Berkeley Law School Dean Chemerinsky, his statement that freedom of speech does not protect a right to shut down others, and I thank you, Mr. Shapiro, for citing Dean Chemerinsky. I also, although I agree that you absolutely, Mr. Shapiro, have a right to call Dean's Trainer and Gerken "spineless coward who are unwilling to confront the illiberal inmates who have taken over their institutions." I find statements like that to be unnecessarily inflammatory, and not helpful to finding solutions to the challenges we are discussing today.

My question is for Ms. Nossel, and I thank you for your testimony. I am acutely aware of the fine line between free speech and hate speech, or harassment on college campuses. I appreciate the work you do for free expression for all. Thank you to PEN America.

Ms. Nossel, where does the line of freedom of expression start and end on a college campus, and are there situations where there should be parameters placed on such expression?

Ms. NOSSEL. Yes. We have well established First Amendment law that defines things like true threats, harassment, that are not protected speech, that can be banned and punished. That should be our lotus star. I do not think we should be passing new legislation that puts new categories of information and expression out of bounds. That we do not have under the First Amendment laws that dictate what can and can not be in the curricula.

To us, that evokes the McCarthy era.

Ms. BONAMICI. I find that very problematic. Could we talk about private colleges for a minute. Should they consider the distinction between free speech allowed under their respective codes of conduct because it is not a First Amendment issue, and speech that would otherwise be considered prohibited by the First Amendment, threatening violence for example?

Ms. NOSSEL. I think most private colleges have staunch free speech obligations of their own that they voluntarily have undertaken. As part of a mission statement, or a university policy, many of the universities like Stanford that we are talking about, have adopted those policies, and I think that is extremely important because again, they are incubators of democratic citizenship.

We want students on those campuses to be exposed to all ideas, and I think that is why it is so important that the leadership of Stanford University did step in, and say this was not handled appropriately, and here is what our principles are.

Ms. BONAMICI. I absolutely agree with that. Yes, I agree, it is important for students to be exposed to different, and sometimes uncomfortable perspectives in college. As you mentioned, that is how they get prepared to be in the real world. Do you agree that it is also important for colleges, public and private, to consider the mental and physical health and safety of students, and is it important for them to have policies in place before a controversial speaker, or a large protest is expected on campus?

If so, how can they strengthen existing policies and better educate faculty and students on the parameters of their free speech rights and on campus policies?

Ms. NOSSEL. Yes, sure. Of course, a university has to ensure physical safety. That is paramount. There is a lot that they can do to lay the groundwork to protect free speech without impinging upon physical safety. They can have policies that allow people to protest outside, and allow them to protest in ways that do not disrupt.

That can be a very powerful, potent protests that get the message across without interfering with people's ability to listen to a speaker. I think pushing those policies, educating students, educating faculty, ensuring this is part of the curriculum, part of a freshman orientation, would instill those values, and get people to come to grips with those values and——

Ms. BONAMICI. Are there some institutions, and I do not mean to cut you off.

Ms. NOSSEL. No, no.

Ms. BONAMICI. The clock is ticking. Are there some institutions that are doing that well?

Ms. NOSSEL. Some are. We are doing free speech institutes at PEN America that are very well received. We are working with universities across the country, but it needs to be much more widespread.

Ms. BONAMICI. I appreciate that. As I yield back, Mr. Chairman, I request unanimous consent to enter into the record a statement from the American Psychological Association in support of the right of educators to do their jobs without political interference.

Chairman OWENS. No objections.

Ms. BONAMICI. Thank you, Mr. Chairman, and I yield back.

[The information of Ms. Bonamici follows:]

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Date created: February 7, 2023

# APA supports right of educators to do their jobs without political interference

*Attacks on teaching of diversity, equity and inclusion undermine profession, hurt students, says APA president*

WASHINGTON — Following is a statement by Thema Bryant, PhD, president of the American Psychological Association, in response to efforts to dictate what educators may teach and discuss in classrooms:

"The American Psychological Association stands firmly behind the principle of allowing educators and researchers to disseminate and pursue knowledge freely and responsibly, and to do their jobs without political interference.

"Recent efforts by politicians, institutions and other individuals to tell educators and researchers what they may teach and study run counter to the basic tenets of education. Educators at all levels have a responsibility to impart accurate knowledge, science and history to their students. They are also responsible for respecting the informed opinions of others. The current attacks on discussing diversity, equity and inclusion run counter to the psychological research that informs EDI and the principles of academic freedom outlined by the [American Association of University Professors in 1940](https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure) (<https://www.aaup.org/report/1940-statement-principles-academic-freedom-and-tenure>) and endorsed by APA in 1961.

"Talking about diversity in a thoughtful and sensitive way creates a more inclusive environment for students. Research suggests that discussing diversity

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APA supports right of educators to do their jobs without political interference

in classrooms not only reduces stress among students from marginalized backgrounds, but also creates a culture that increases all students' achievement, sense of belonging and overall wellness. In contrast to the view that addressing topics such as privilege and systemic inequity is harmful, research shows that positive experiences with these issues can lead to positive changes in all students' attitudes and values.

"Refusing to provide students with an accurate depiction of history is harmful. Telling educators that they may not talk about concepts central to diversity, equity and inclusion hurts students and limits teachers' ability to fulfill their professional responsibilities."

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**Find this article at:**

<https://www.apa.org/topics/lgbtq/history>

Chairman OWENS. Thank you. I would like now to recognize Mr. Banks.

Mr. BANKS. Thank you, Mr. Chairman. I would like to include for the record a study from the Heritage Foundation Titled Inclusion Delusion, the Anti-Semitism of Diversity, Equity and Inclusion Staff at Universities dated December 8, 2021, by Dr. Jay Green and James Paul.

Chairman OWENS. No objection.

Mr. BANKS. Thank you.

[The information of Mr. Banks follows:]





## BACKGROUNDER

No. 3676 | DECEMBER 8, 2021  
CENTER FOR EDUCATION POLICY

# Inclusion Delusion: The Antisemitism of Diversity, Equity, and Inclusion Staff at Universities

*Jay P. Greene, PhD, and James D. Paul*

### KEY TAKEAWAYS

Contrary to their responsibilities, university diversity, equity, and inclusion (DEI) staff often contribute to hostile conditions for Jewish students.

Searching Twitter feeds of 741 DEI personnel at 65 universities shows the vast majority of tweets on Israel are critical to the point of being antisemitic.

By comparison, these same DEI staff devote one-third as much attention to China as Israel on Twitter and are mostly favorable toward the communist country.

Universities ostensibly employ diversity, equity, and inclusion (DEI) staff to create more tolerant and welcoming environments for students from all backgrounds. A previous Heritage *Backgrounder* documented that the number of people devoted to DEI efforts has grown to about 45 people at the average university.<sup>1</sup> This *Backgrounder* examines whether these large DEI staff are, in fact, creating a tolerant and welcoming environment on college campuses. In particular, this *Backgrounder* examines the extent to which DEI staff at universities express anti-Israel attitudes that are so out of proportion and imbalanced as to constitute antisemitism.

To measure antisemitism among university DEI staff, we searched the Twitter feeds of 741 DEI personnel at 65 universities to find their public communications regarding Israel and, for comparison

This paper, in its entirety, can be found at <http://report.heritage.org/bg3676>

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purposes, China. Those DEI staff tweeted, retweeted, or liked almost three times as many tweets about Israel as tweets about China. Of the tweets about Israel, 96 percent were critical of the Jewish state, while 62 percent of the tweets about China were favorable. There were more tweets narrowly referencing “apartheid” in Israel than tweets indicating *anything* favorable about Israel whatsoever. The overwhelming pattern is that DEI staff at universities pay a disproportionately high amount of attention to Israel and nearly always attack Israel.

While criticism of Israel is not necessarily antisemitic, the inordinate amount of attention given to Israel and the excessive criticism directed at that one country is evidence of a double-standard with respect to the Jewish state, which is a central feature of a widely accepted definition of *antisemitism*.<sup>2</sup> Frequently accusing Israel of engaging in genocide, apartheid, settler colonialism, ethnic cleansing, and other extreme crimes while rarely leveling similar criticisms toward China indicates an irrational hatred that is particularly directed toward Jews and not merely a concern for human rights.

The evidence presented in this *Backgrounder* demonstrates that university DEI staff are better understood as political activists with a narrow and often radical political agenda rather than promoters of welcoming and inclusive environments. Many DEI staff are particularly unwelcoming toward Jewish students who, like the vast majority of Jews worldwide, feel a strong connection to the state of Israel. The political activism of DEI staff may help explain the rising frequency of antisemitic incidents on college campuses<sup>3</sup> as well as the association between college and graduate education and higher levels of antisemitic attitudes.<sup>4</sup> Rather than promoting diversity and inclusion, universities may be contributing to an increase in anti-Jewish hatred by expanding DEI staff and power.

## The Context

There has been a sharp increase recently in antisemitic incidents worldwide,<sup>5</sup> in the United States,<sup>6</sup> and particularly on college campuses.<sup>7</sup> According to Hillel International, the main university organization for Jewish students, there were 244 antisemitic incidents reported during the mostly virtual 2020–2021 school year compared to 181 during the prior year when everyone was on campus for in-person instruction.<sup>8</sup>

DEI staff are supposed to be working to prevent such incidents rather than foment them. According to the National Association of Diversity Officers in Higher Education Standards of Professional Practice, “Chief diversity officers work with senior administrators and campus professionals

to develop, facilitate, respond to, and assess campus protocols that address hate-bias incidents, including efforts related to prevention, education, and intervention.”<sup>9</sup> DEI staff are supposed to prevent hate/bias incidents directed at any student group: “Chief diversity officers have ethical, legal, and practical obligations to frame their work from comprehensive definitions of equity, diversity, and inclusion—definitions that are inclusive with respect to a wide range of identities.”<sup>10</sup>

But the activities of many DEI staff lend credence to the title of David Baddiel’s recent book that “Jews don’t count.”<sup>11</sup> Not only do DEI staff fail to attend to Jewish concerns, including scheduling events on Jewish holidays, but there have been reports of diversity officials expressing antisemitic attitudes. The most prominent example of this from the corporate world was when Kamau Bobb, the head of diversity at Google, wrote that Jews have an “insatiable appetite for war” and an “insensitivity to the suffering [of] others.”<sup>12</sup> Amazingly, Bobb was only reassigned to work on STEM education efforts for Google.<sup>13</sup> Bobb let the mask slip by accusing “Jews” of these crimes rather than simply saying “Israelis” or “Zionists.” If DEI staff maintain that cover, they might be able to get away with expressing virulent antisemitic statements without even being reassigned to new positions. This *Backgrounder* examines empirically how common these kinds of antisemitic statements are from university DEI staff.

## The Method

The previous *Backgrounder*, “Diversity University,” identified 2,933 DEI staff at 65 “Power Five” universities. Primarily using Google searches, we found 797 Twitter accounts linked to these DEI staff. Of those 797 accounts, 56 were “protected” so that tweets could not be viewed. That left 741 accounts that could be searched for antisemitic content.

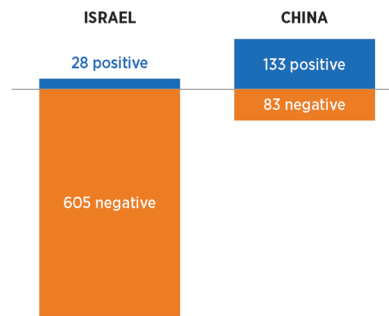
Almost all of these were personal accounts, not operated by the universities themselves. Thus, they provide a window into what these DEI staff believe and how those beliefs may shape their university work.

The publicly available Twitter feeds of these DEI staff were searched for comments related to Israel and, for comparison purposes, China. The specific search terms to find comments related to Israel were *Israel*, *Palestine*, *Palestinian*, and *Gaza*. The search terms for China were *China* and *Chinese*. The searches found all mentions of these terms in the tweets, retweets, and “likes” of tweets associated with these accounts. Researchers coded whether each tweet indicated a positive or negative view toward Israel and China, respectively.

CHART 1

### Diversity, Equity, and Inclusion (DEI) Staff Tweets about Israel and China

**SOURCE:** Authors' calculations based on search of 741 Twitter accounts belonging to Diversity, Equity, and Inclusion staff members at U.S. universities. For more information, see the methodology.



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Of course, this approach does not find all public communications from DEI staff regarding Israel and China. Not all DEI staff have accounts on Twitter. Some accounts may not have been found by Google searches involving their name and institution, especially if individuals avoid mentioning their real name and employer on social media. Some people automatically delete their tweets, retweets, and likes periodically, making it impossible to find earlier communications. People may describe Israel or China using words other than those that were used as search terms. Moreover, the application used to facilitate searching truncates some tweets and places a cap on how many tweets can be searched per user. For all of these reasons, the results presented in this *Backgrounder* are a conservative undercount of public communications. Nonetheless, the patterns that this imperfect method yield are likely an accurate presentation of the broader picture of DEI staff sentiment toward Israel and China.

### The Results

DEI staff have a disproportionate interest in Israel relative to China and are far more likely to be critical of Israel than they are of China. In total, there were 633 tweets regarding Israel compared to 216 regarding China—three times as many—despite the fact that China is 155 times as populous as Israel and has 467 times the land mass. China has also had many reasons to be in the news recently, including being the origin of the pandemic, conducting a brutal crackdown on pro-democracy forces in Hong Kong, mass imprisonment and

mistreatment of China's Muslim Uyghur population, increasing confrontation with Taiwan and other countries in the Pacific Rim, and severe internal repression of political dissent and private corporations. One who is genuinely interested in human rights around the world had many more reasons to be paying attention to China than to Israel.

Of the 633 tweets regarding Israel, 605 (96 percent) were critical of the Jewish state. Of the 216 tweets regarding China, 133 (62 percent) expressed favorable sentiment.

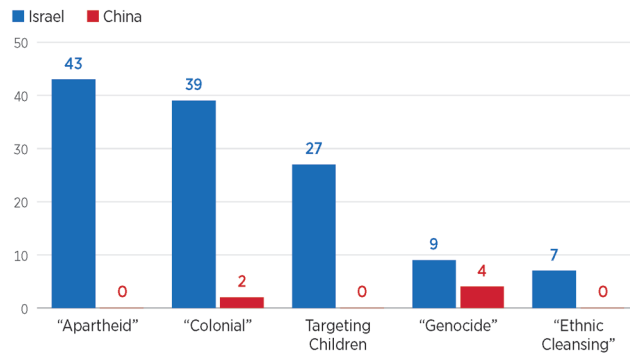
### Examples of Tweets About Israel

The severe tone and extreme content of the tweets, retweets, and likes critical of Israel are even more illuminating. There is no reason to identify individual DEI staff, but quoting from their tweets and counting the use of hyperbolic rhetoric is important.

For example, the word *apartheid* appears 43 times in DEI staff public communications about Israel. One retweet by a Multicultural Student Affairs staff person asserted that “the State of Israel is guilty of the human rights crimes of apartheid and persecution. Settler colonialism is fundamentally violent. And it begets violence.” Another remark retweeted by someone in an Office of Inclusion and Diversity stated that “one cannot teach radical geog/critical urban theory without a curriculum on this settler colonialism & apartheid.” A tweet by a Multicultural Student Center staff person declared, “Condemn the Apartheid State of Israel for their Human Rights Violations against the Palestinian.” An assistant director of an Office for Institutional Equity and Diversity lamented, “no apology for a pro apartheid Zionist organization holding a reception? I guess there's no justice for Queer Palestinians here.”

Some variant of the word *colonial* appears 39 times in tweets, retweets, or likes by DEI staff. A person working for Graduate School Diversity Programs liked the message, “Y'all love to add the word liberal in front of the most evil things and it's unhingedddd. Wtf is a liberal Zionist? What's next? Liberal Nazi? Liberal colonizer? Liberal murderer? Liberal imperialist? Liberal fascist?” One staffer at a Multicultural Student Involvement and Community Advocacy Center endorsed the following: “You cannot disentangle the colonization experienced by indigenous ppl from the racism experienced by black ppl from the xenophobia experienced by latinx ppl from the imperialism experienced by palestinians. They're all different extensions of the same oppressive project.” A person in an LGBTQ Equity Center retweeted, “Re Palestine, you gotta understand: there's no 'controversy.' Most people

CHART 2

**Frequency of Terms Found in Tweets by DEI Staff Members at Major Universities**

**SOURCE:** Authors' calculations based on search of 741 Twitter accounts belonging to Diversity, Equity, and Inclusion staff members at U.S. universities. For more information, see the methodology.

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around the world know that Israel brutally colonizes the Palestinians. The issue is only 'controversial' because Zionists pitch a fit whenever anybody speaks this truth."

The word *genocide* appears nine times, the term *ethnic cleansing* appears seven times, and the accusation that children are specifically targeted appears 27 times. The assistant director of an Asian Pacific student center tweeted, "#Gaza is under attack. This is genocide. #FreeGaza." One DEI staffer retweeted, "what you need to understand is that these are entire BLOODLINES being wiped out. generations upon generations completely GONE. their indigenous history with them." A staffer in a Center for Educational Outreach retweeted, "israel has a particular loathing for children. they target them with violence specifically and intentionally every single day."

The public communications of DEI staff embrace the genocidal phrase *from the river to the sea*<sup>14</sup> five times. One message declares that "'from the river to the sea' means that we will decolonize every block and every grain of sand in palestine. go ahead and fuel people to make us look like we're bloodthirsty for the death of jews when you've just killed 42 family members

in one airstrike.” Another states, “Every Israeli bomb and bullet used against Palestinians and paid for by USA dollars has been consummated by the blood and soil of American Indians. From the river to the sea and from sea to shining sea, we shall be free.”

Angela Davis,<sup>15</sup> the former vice presidential candidate for the Communist Party who was accused of supplying the guns that resulted in the killing of a judge, features prominently in DEI staff tweets. So does former CNN commentator Marc Lamont Hill, who was fired by the network for his antisemitic statements.<sup>16</sup> One LGBTQ center staff person who is also an instructor tweeted, “I ordered ‘Queer Palestine and the Empire of Critique’ which I think I’m going to pair with Angela Davis’ ‘Freedom is a Constant Struggle’ in my LGBTQ activism class in the spring!” The director of an African American Cultural Center posted a photo with the following description and quotation from Davis: “The Black Panther Party & a Palestinian delegation at the first Pan-African Cultural Festival in Algiers, 1969. ‘The Black radical tradition is related not simply to Black people but to all who are struggling for freedom ... our histories never unfold in isolation.’—Angela Davis.”

While American Jewry is rarely mentioned specifically in these public communications from DEI staff, their alleged role in facilitating Israeli crimes is often in the subtext. An Outreach and Engagement librarian retweeted, “Tell U.S. Jewish leaders: Stop defending #Gaza assault.” One multicultural consultant liked the message, “Jewish people are not responsible for the actions of the Israeli government, but we are responsible for calling out violence and human rights abuses when we see them, especially when the people committing the violence claim to be doing so in our name.” A DEI staffer at a Big Ten school was clearly describing the supposedly insidious influence of American Jews when he liked this message: “There’s a vast philanthropic-lobbying complex in the US that works tirelessly to present Israelis as benevolent, peace-loving, and fundamentally reasonable victims of Palestinian aggression, and meanwhile in actual Israel no one bothers with the pretense.”

The relatively small number of tweets, retweets, or likes by DEI staff favorable toward Israel—28 in total—are tepid compared to the fire-breathing tone of those that are critical. Sometimes the praise is mixed with criticism of Israel. For example, a leader of an Office of Diversity and Inclusion liked this mixture of praise and criticism: “Dear Israel, you have a story to tell that is important and often glorious. But you don’t tell your story by keeping people out. You tell it by opening your arms, sharing the complexity and challenges and inviting exchange and ideas.” An associate dean for diversity and inclusion praised Israel’s democracy while denouncing its leader: “The beauty of a democracy is the right of people to elect the wrong person. Jerusalem, Israel.”

Other positive comments lamented insufficient attention to Israeli and Jewish contribution to progressive causes: “why no coverage in the media?: Thousands of Jewish protesters join 500,000-strong Women’s March... via @timesofisrael.” But most of the favorable tweets were about trips to Israel, Israeli scientific innovations, or expressions of support for memorials. The closest thing to a full-throated defense of Israel can be found in this tweet liked by an associate at a Multicultural Engagement Center: “The Jewish people are indigenous to Israel, the birthplace of our identity and unique culture, and have maintained a documented presence for over 3,000 years.” But this tweet is the only one like it among the more than 600 tweets, retweets, and likes found in DEI staff Twitter feeds.

### Examples of Tweets About China

The favorable tweets about China also tended to be more tepid than those that were critical, but they were far more common. For example, some positive tweets focused on partnerships between the DEI staff person’s U.S. university and government or educational institutions in China. One Big Ten DEI official stated, “A real pleasure to meet China’s Vice Minister of Ag and Rural Affairs Han Jun in Beijing last night to discuss Ag and food innovation.... Wonderful conversation with great plans for the future.” An assistant provost at another university praised the success of her institution’s president at establishing partnerships with Chinese universities: “President Stresses Internationalization Opportunities on Trip to China. [University president] signed five cooperative agreements with Chinese universities and was a featured speaker at an event for globalization in academia.”

Another common type of tweet favorable to China was to extoll China for its efforts to combat COVID-19. An associate dean for diversity, equity, and inclusion endorsed this message: “Chinese medics have just arrived in London to help us fight Covid-19. The media won’t tell you for some reason.” A multicultural consultant at another university affirmed, “Thank you to psychologists from Wuhan, China for helping @APA to learn from their experiences of #COVID and improve our ability to care for the #mental-health & needs in the #USA.”

Other DEI staff expressed favorable sentiment toward China to counteract what they perceived to be anti-Chinese bias. A staff person at a Center for Multicultural Affairs expressed concern: “when are people going to realize that anti china propoganda [*sic*] directly correlates with a rise in hate crimes against Asians.”



A few people offered strongly worded praise of China. An LGBTQ staff person seemed to think that it would be better to be a trans person in China: “i wonder a lot if it would feel easier to come out to my parents if i was a -binary trans woman- or what the f\*\*\* ever b/c they at least have a frame of reference for trans women celebrities in China.” Another DEI staff person endorsed this tweet from the *People’s Daily* newspaper in China touting how China had improved the lives of people in Tibet: “China’s Tibet Autonomous Region had lifted 530,000 people out of poverty during the five years to 2017, reducing poverty rate to 12.4% from 32.3% at the end of 2012, the regional poverty relief office said Friday.”

The smaller number of tweets regarding China that expressed criticism tended to focus on human rights issues. An associate dean for diversity and inclusion retweeted, “Human rights experts estimate that 1.5 million Uighur Muslims and members of other ethnic minority groups, including Chinese-born Kazakhs, have been detained in Xinjiang since 2016.” The assistant director of campus inclusion and community responded to a *Bloomberg* news headline that said, “China looks at cutting inequality in order to boost the economy” by asking, “Good for China. But also are they still doing that Muslim genocide? Why we ain’t also talking about that?”

A number of negative tweets about China addressed the treatment of African residents in China. An associate provost for inclusive excellence retweeted, “In China, African residents are alleging anti-black racism resulting from the coronavirus pandemic.” Others expressed concern about Chinese efforts to use technology for surveillance. An assistant dean for equity and inclusion endorsed these concerns: “Google built prototype of a censored search engine for China that links users’ searches to their personal phone numbers, thus making it easier for the Chinese government to monitor people’s queries.”

The extreme language used in tweets regarding Israel almost never appeared in tweets regarding China. There are no occurrences of the words *apartheid* and *ethnic cleaning*, nor is China ever accused of targeting children in these tweets, retweets, and likes. The term *colonial* does appear twice, but it is used favorably toward China. For example, one tweet asserted that people “talk about China like a British colonial officer from 1850.” The term *genocide* does appear four times in tweets about China, but that is less than half as common as the term was used with respect to Israel.

The overall picture, however, is that DEI staff were less likely to offer criticisms of China than of Israel, and those criticisms tended to be less strongly worded. It would be impossible to review the inordinate attention that DEI staff pay to Israel relative to China, the nearly universal attacks on

Israel versus general praise of China, and the dramatically different tone used in discussing Israel and China without concluding that DEI staff have an obsessive and irrational animus toward the Jewish state.

### The Definition of *Antisemitism*

Some people might object that just because DEI staff express criticism of Israel frequently and forcefully does not necessarily mean that they are antisemitic. According to a widely accepted definition of *antisemitism*, however, criticism of Israel constitutes antisemitism when it exhibits certain characteristics. This definition was formulated by the International Holocaust Remembrance Alliance (IHRA)<sup>17</sup> and has been endorsed by governmental bodies around the world, including the European Parliament, the U.S. State Department,<sup>18</sup> and the U.S. Department of Education's Office of Civil Rights,<sup>19</sup> which oversees the activities of DEI staff at universities.

The IHRA definition suggests the following as examples of antisemitism:

- “Denying the Jewish people their right to self-determination, e.g., by claiming that the existence of a State of Israel is a racist endeavor”;
- “Applying double standards by requiring of [Israel] a behavior not expected or demanded of any other democratic nation”;
- “Drawing comparisons of contemporary Israeli policy to that of the Nazis”; and
- “Holding Jews collectively responsible for actions of the state of Israel.”

The tweets, retweets, and likes of DEI staff documented here provide instances of all of these antisemitic qualities. The frequent use of terms such as *apartheid* and *colonialism* are meant to portray Israel as a racist endeavor and deny its right to exist as the homeland of the Jewish people. The forceful denunciation of Israeli responses to rocket and terrorist attacks prominently feature a double standard, as only the Jewish state is expected not to defend its citizens in a way that all other countries would. The sparsity of criticism of China relative to Israel is also strong evidence of a double standard. Accusing Israel of genocide or ethnic cleansing is clearly meant to equate Israeli policy with that of the Nazis. And demanding that U.S. Jewish leaders denounce Israeli actions or accusing them of hypocrisy for failing to do so are clear examples of holding Jews collectively responsible for Israel's behavior.

## Conclusion

According to Gallup data, 95 percent of American Jews support Israel.<sup>20</sup> While that figure is lower among younger Jews, a large majority of Jews at American universities feel connected to the state of Israel as part of their Jewish identity. Even if the hyperbolic and obsessive criticism of Israel expressed by university DEI staff did not meet the definition of *antisemitism* (which it clearly does), attacking a central feature of Jewish students' identity would be entirely contrary to the stated purpose of having DEI staff: to welcome students from all backgrounds, make them feel included, and prevent or address incidents of hate and bias. But it is clear that DEI staff at universities actually function as political activists, articulating and enforcing a narrow and radical ideological agenda.

Truly achieving diversity, especially ideological diversity, and helping all students feel included requires a dramatic change in how universities approach DEI. Existing staff need to be dramatically reduced, and the remaining DEI infrastructure needs to be reoriented toward serving the true purposes of diversity and inclusion.

**Jay P. Greene, PhD**, is Senior Research Fellow in the Center for Education Policy, of the Institute for Family, Community, and Opportunity, at The Heritage Foundation. **James D. Paul** is Director of Research at the Educational Freedom Institute.

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Mr. BANKS. Dr. Shapiro, is wokeism, or more specifically DEI programs a gateway to anti-Semitism, and even hatred or violence toward people of faith?

Mr. SHAPIRO. Absolutely. It seems that Jews are not part of the latest hierarchy of intersectionality, and they are too privileged in various ways, and certainly the growth of the bureaucracies and programs has been correlated with the growth of anti-Semitism.

Mr. BANKS. Can you talk about how they—how DEI programs foster hatred toward people of faith?

Mr. SHAPIRO. Well, they foster illiberal attitudes of all kinds, and again, this is not as Suzanne said, the words diversity, equity, inclusion, nobody could disagree with their facial meaning. Intellectual diversity, people wanting to feel welcome, treated fairly, equitably, that is great, but the way that they have been perverted—you ask about religious groups. There are plenty of ripe examples of religious groups that are not treated the same as secular groups of various kinds, even though the Supreme Court ruled more than 25 years ago in *Rosenberger vs. UVA*, that if you provide certain types of resources, you should provide them equally equitably to religious organizations as well.

Mr. BANKS. The study that I just mentioned from the Heritage Foundation, 2021, found that DEI related staff on American college campuses were overwhelmingly anti-Israel, and a majority were indifferent, or even agreeable to the Chinese Communist party.

Based on a search of over 700 Twitter accounts of DEI staff on campuses across the country, just 28 tweets were found to be favorable toward Israel, while 605 tweets were negative. 133 tweets were pro-China, while just 83 of the overall tweets were negative.

Does it seem like these DEI staff are in themselves not very diverse in their viewpoints?

Mr. SHAPIRO. That is true. I mean they have their individual constitutional rights as well to speak on however they like, but those kinds of views definitely are imbued in the trainings that we have seen, and the materials of the various kinds of programming that they promulgate. Since you are citing studies, I have another Heritage Study, I can not enter it, but I suggest I recommend that you look at Heritage Backgrounder 3641, by the same authors, Jay Green and James Paul titled Diversity University DEI Bloat in the Academy.

That addresses a host of these issues, including one of your colleagues mentioned the increasing cost, and the growth in bureaucracy certainly contributes to that as well.

Mr. BANKS. 190 billion dollars a year that the Federal Government gives to colleges and universities. What can we do to stop universities from hiring these DEI or woke programs that directly attack people of faith?

Mr. SHAPIRO. Well, I think the Federal Government spends too much money on almost everything, and this is certainly an area where cutbacks are, I think, appropriate, but at least attach heavier strings, constitutionally based values based of classical liberalism that we are all supposed to agree on in the broad quality.

Mr. BANKS. It seems like quite a problem that we have, and I am deeply concerned that the leadership, the administrations of our universities are hiring these woke officials, DEI programs that

attack people of whatever faith. I appreciate you bringing light to that. With that, Mr. Chairman, I yield back.

Mr. SHAPIRO. Could I say one more thing, Mr. Banks?

Mr. BANKS. I have 48 seconds left.

Mr. SHAPIRO. Yes. I just want to clarify, and I think you probably would agree with this distinction between the DEI bureaucracies and staffs, and the sorts of folks working on civil rights compliance, Title 9, ADA, all of these things that we would have recognized from our time in college and graduate school 20–25, 30 years ago. It is a fairly recent phenomenon, so it is not about shutting down student groups that want to care about their ethnic backgrounds, or anything like that.

It is about institutional promulgation of illiberal post-modern theories.

Mr. BANKS. Thank you. I yield back.

Chairman OWENS. Thank you. Now I would like to recognize Ms. Manning.

Ms. MANNING. Thank you, Mr. Chairman. Thank you to our witnesses for being here today. We have seen a rise of anti-Semitism on college campuses across the country, and according to ADL's most recent audit of anti-Semitic incidents, anti-Semitic activity on college and university campuses has increased by 41 percent in 2022, compared to the previous year.

College and university leaders play a key role in responding to these types of situations. They must ensure that no one is punished for their protected speech. Just because it discomforts some, and simultaneously, they must use their moral authority to counter hateful and anti-Semitic speech with timely, specific and direct responses.

How can administrators, staff, faculty, and all community members more effectively respond to hateful speech, including anti-Semitic speech, while fulfilling the promise of creating educational institutions that both safeguard free expression, and ensure that all members of the community feel safe and welcome?

Ms. Nossel.

Ms. NOSSEL. Thank you so much, Congresswoman. There is a lot the university can do to address bigotry and hatred whether it is anti-Semitism, or anti-LGBT, or racist speech on campus. It happens through education. It happens through nurturing and supporting student groups that mobilize, and that unify and bring people together to draw attention to these issues.

It happens through ensuring open discourse, that there are not topics that are off limits that, you know, even if it is robust debate on say issues of Israel Palestine, which can be very contentious, which can lead to claims of harm on both sides, that there is space to those even very challenging, and sometimes uncomfortable conversations that that is something that the university stands for, and makes possible.

There is no contradiction between creating a hospitable, welcoming environment for students from all backgrounds, be it racial, religious, or otherwise, and robust protections for free speech. In fact, they are mutually reinforcing.

Ms. MANNING. What is the best way to help administrators, and professors, and faculties understand that this is not an either/or.

It is a yes. How can we provide the information, the tactics, and techniques they need to be effective in both of these areas.

Ms. NOSSEL. Yes. I think it is a matter of fostering greater emphasis, greater training, greater discussion. That is what we have been doing as PEN America across the country, convening faculty, students, and university leaders from across the political spectrum. People have been on opposing sides of some of these inflammatory incidents to get them around the table, and talk about why did they invite that speaker?

What was going on? How did other people react to that? What was unanticipated? Training people in the precepts of the First Amendment and free speech, and the role of the university. We find when you do that, people understand it. It clicks, they recognize, this is not a contradiction that even if you are a DEI official you can do your job without impinging on freedom of speech.

Unfortunately, I think that training is not always in place, and we have just got to reach more widely and broadly to get to those who are in those roles.

Ms. MANNING. Do you believe we can use DEI to encompass discrimination against Jewish students, and other kinds, other minority groups?

Ms. NOSSEL. Yes. I think DEI should look at all forms of diversity on a campus.

Ms. MANNING. Are there other proactive things that universities should do to educate not just their faculty and administrators, but their students about the importance of free speech and accepting the fact that people come from different backgrounds, and have different cultural religious beliefs?

Ms. NOSSEL. I think so. Look, I think it is extremely important, overwhelmingly college students in this country are progressive. We hear that in this panel the conservative students are in the minority on these campuses. We need to present the ideas of free speech in the First Amendment in ways that make sense to progressive students, that resonate with the struggles that they want to wage.

They need these rights to be protected in order to advocate for climate justice, or gender justice. It is a matter of if it becomes a partisan cause, if they are set by laws and restrictions that constrain their ability to study, theories and topics in American history that touch on race or religion, they are going to be alienated from the principle of free speech.

I think that is a real risk with the tactics that are being pursued right now, this heavy hand of the State being inserted in the form of legislation to dictate what can and can not be taught and studied on campus.

Ms. MANNING. Thank you. I wish we had time for a longer discussion, but my time has expired, and I yield back.

Chairman OWENS. Thank you. I now would like to recognize Mr. Grothman.

Mr. GROTHMAN. Okay. Thank you. Mr. Joner, I am glad you are here today. I do think personally that we need a little more diversity on campuses. I would like to ask you what you know about Stanford's DEI program. You hear, at least in universities in Wisconsin, great concerns about the lack of diversity among faculty,

whether you measure that be religious background, or religious belief.

Whether you measure it by political belief, students feel that frequently they have to lie because of a hatred toward more conservative view of the world. Do you feel that the DEI offices in Stanford are diverse like our, whatever, 45 percent of the people, you guess, pro-life, or you know, maybe 45 to 50 percent voted for President Trump, that sort of thing.

What is your opinion of the diversity of the DEI offices at Stanford?

Mr. JONER. What I have seen at Stanford is that the DEI office is very one sided. There is not much neutrality, and what we have seen in incidents like—I do not personally interact much with these DEI officials, and I do not know many students who do, despite Stanford having one of the highest—the highest rate of DEI officials per capita.

What we do see from the DEI officials are these videos, like the 6-minute speech from the Dean at Stanford Law School a couple weeks ago. The harmful language initiative released from Stanford that really tends to censor free speech. These DEI officials are not really promoting this diversity of thought. They are actually squashing it in the classroom, and the university.

Mr. GROTHMAN. I am familiar with the Stanford video. It seems there was a lot of hate going on at Stanford that day. Do you feel there is a lot of hate disseminated by the DEI bureaucracy?

Mr. JONER. I am not sure that I would say there is a lot of hate disseminated by the bureaucracy, but what we have seen in like just that video from a few weeks ago at Stanford Law School is that these university administrators who are supposed to be the ones enforcing these principles, which are in the university's policies, are not doing just that.

They are condemning in this case, Judge Kyle Duncan's right to speak, condemning his actions, and they are not taking the place of a neutral university administrator, and not doing their jobs.

Mr. GROTHMAN. Okay. Mr. Shapiro, could you comment in general on the cost of these DEI programs, and do they add anything to the academic atmosphere that you have in universities?

Mr. SHAPIRO. Well, the cost of tuition and university budgets has certainly exploded in the last five, 10, 15 years, concomitant with the growth of initially bureaucracies are more broadly and non-teaching staff. I think about 2010 non-teaching staff started to exceed the number of teaching full-time instructors at most institutions.

Of late, most of that bureaucratic growth has been in the DEI sector. I do not have a number off the top of my head, or an average or anything like that.

Mr. GROTHMAN. Well, wait a minute. Did you just say that in the universities today we have among white collared jobs more people who are non-teaching positions than teaching positions?

Mr. SHAPIRO. In some places there are more non-teaching staff than students, indeed. You could have—somebody wrote a cute op-ed saying maybe each student at Yale should get their own personal butler.



Mr. GROTHMAN. That is shocking, but perhaps no wonder why there are so many kids in debt out there. Could you elaborate a little bit more on are they making progress, the DEI in hiring more conservative professors, or making the professors more like America in general? Are they making any progress there? Are they really going the opposite direction, kind of the opposite of diversity. We want to stamp out diversity.

Mr. SHAPIRO. Faculty hiring is generally separate from DEI, although the DEI offices do impose diversity statements, loyalty oaths to progressive orthodoxy that have proliferated upwards of a quarter of faculty, I think these days nationwide can not be hired if they do not pass that ideological litmus test.

Similarly, on the other side of whether they are succeeding on their own terms, there have been campus surveys, a very good report by Scott Yenner about Texas A&M specifically, Jonathan Height, a social psychologist has done good work on this. As the DEI offices have grown, students comfort and sense of belonging at school has decreased, and that is especially among members of racial minority.

Even on their own terms, DEI offices are failing spectacularly.

Mr. GROTHMAN. Do you think because the Congress, the State legislatures contribute so much money to academia that we have to step in, as we have in the private sector, and should not have quite frankly, but we have to step in and force more diversity like, say like 40 percent of the English professors should be conservative, religious in thought, or that sort of thing?

Mr. SHAPIRO. Mr. Chairman, I see the red light on. May I answer? Well again, I am hesitate to recommend State legislatures, let alone Congress get involved in the minutia of faculty hiring, or impose some sort of quotas or preferences, affirmative action based on ideologies, so I would not recommend that. I would, as I said, recommend strings attached to Federal funding to make sure that everyone is treated equally, nobody is discriminated against, free speech rights are observed, and there is not this huge chilling effect for faculty and student alike, feel like they have to walk on eggshells, lest they be investigated by these diversity inquisitors.

Mr. GROTHMAN. Thank you.

Chairman OWENS. Thank you, Chairman from Oregon. Please, you are recognized.

Mrs. DEREMER. Well, thank you. Thank you for being here. I appreciate it. Ms. Trump, it seems there are biased administrators that are empowered by their school's ability to define harassment past what Title 9 provides. Resulting in weaponized and fluid definitions of serious terms, would it be responsible for Congress to provide schools with clarity on what is and what is not harassment?

Mrs. TRUMP. Yes. Currently there is something called the Davis Standard in place on Title 9, and this is something that, through our lawsuits, we have also had universities implement in their other harassment and anti-discrimination policies. This Davis standard has a very high bar for what kind of speech can be considered harassing conduct.

Because of that, it balances—the best example we have seen today that balances First Amendment Rights and protections with

protecting students through these policies. The Davis standards says that in order for speech to be considered harassing conduct, it has to be so severe, pervasive, and objectively offensive, that to the point where students do not have equal access to education, and that is the best example we have seen.

It would be great if Congress was interested in codifying something like that.

Mrs. DEREMER. Well, that kind of answers my next question. I will go ahead and leave it at that. Ms. Nossel, I think it is important to remember that my democratic colleagues also value the First Amendment. As the democrat witness, who is fully invested in protecting free speech on college campuses, in which specific areas should democrats and republicans on this committee work together to address this specific issue?

Ms. NOSSEL. I think shining a spotlight on those shared concerns, reinforcing those shared concerns, and the basic precepts of the First Amendment. I think the kinds of legislation that we have seen. Mr. Shapiro just said he would be hesitant to see legislation trying to dictate who can and can not be hired on college campuses.

I wonder why that same concern is not raised in relation to what can and can not be taught on a college campus, or whether a college campus can have something called a DEI office that may deal with things like veterans affairs, and disability rights issues, along with other topics.

I think reinforcing that basic precept of the First Amendment that says, this is not the realm of legislation that academic freedom on campus needs to be protected, that we need a buffer zone so that it is not direct intervention and political dictates in what can and cannot be taught. I think that is a place where I would hope we could come together.

Mrs. DEREMER. Thank you. With that, Mr. Chairman, I yield back.

Chairman OWENS. Thank you. I would now recognize Mr. Thompson.

Mr. THOMPSON. Chairman, thank you so much. Chairman, Ranking Member, thank you for this important hearing, very timely obviously. We see this in the news almost every day, you know. I appreciate it. My first question is for Mr. Joner. Mr. Joner, across the country we have seen student groups on the campus, particular religious and conservative groups, face challenges with recognition and hosting events.

When you discriminate against any group for whatever reason, that is discrimination right? It is—how can we make sure all student groups are treated equally when expressing their views?

Mr. JONER. Congressman, thank you for the question. I will point to two examples that I witnessed on campus besides the incident at the Law School. Vice President Mike Pence came to speak at Stanford about a year ago, and initially his request for funding was denied by the student government. Matt Walsh recently came to campus a few weeks ago, and his fliers, and posters were burned down around campus.

We see this often. It is a common occurrence. What we need, we need individuals on campuses, and students like myself to respect

this principle of free speech. Then we do need university administrators who are there to enforce these principles.

What we have seen just a few weeks ago throughout the country is that these universities are hiring administrators who are not committed to this principle of free speech, which is embedded in their policies already. While we need this to be an integral part of each student's education, we also need to have these university administrators who are able to enforce these policies, and make sure that they are doing so.

Mr. THOMPSON. Absolutely. I mean I think that so much of what we are seeing is based on the administrators, the supervisors, the folks who are hired, who are not doing their due diligence, and showing in a responsible way a commitment to freedom of speech. Our universities are supposed to be laboratories of ideas, ideals, and should not be, that scale should not be—their thumb should not be on the scale one way or the other.

Clearly, with what we see is across most universities today. I do not want to paint with a complete broad brush, but we have seen the individuals who are responsible for that free speech. Quite frankly, the faculty. Their biases come through. My belief is universities are there to teach you how to think in terms of applying critical analysis, all right.

They are not there to teach you what to think, outside the scope of perhaps specific details of a particular profession that someone may be preparing for, the technical details of that. Ms. Trump, you talk about the rise in bias reporting systems on college campuses.

Can I expect these types of 1984 esque environments occurring on campus in say Communist China. It is hard to imagine that on American college campuses we are encouraging adults, and that is who these folks are, they are young people, some of them just becoming adults, and quite frankly with what we used to call atypical students, they are clearly in their adult years, to report on their peers for something as little as hurting someone's feelings.

Do you believe that bias reporting, Ms. Trump, creates an environment of pressing students in the specific ideologies, and even to survey a State, and how does this type of environment impact the long-term mental health of students when they enter the real world?

Mrs. TRUMP. Yes. Students are absolutely walking on eggshells on college campuses. Most of the students that I speak to are quietly telling me what their political opinions are, and oftentimes will refuse to even talk to me about their political ideas on campus, or on the phone while they are on campus, out of fear that someone will overhear their conversation, and a target will be painted on their back.

Because there are these reporting systems, as you mentioned, the biased reporting systems, where the universities have put mechanisms in place, and constantly send emails and encourage students to report on each other, and on faculty members.

We have seen examples that range from the ridiculous ones, where someone reported Saudi Arabia that was written on a white board, and there was no evidence of who wrote the word Saudi Arabia, or why, but they reported because they thought oh, my initial instinct, my immediate reaction to seeing something that might

potentially be offensive is to report it to an administrator, rather than to actually ask a question about it.

We have seen plenty of examples like this, and it goes—you really start to ask the question what is going to happen when they graduate because they will take these mindsets with them into the professional world, like we have already seen with cancel cultures.

These are going to be tech CEOs, these are going to be people who are going to run organizations, and run businesses, and they are going to take these ideas of shutting down other ideas that they do not agree with into the professional world.

Mr. THOMPSON. Well, thank you so much, Chairman. Thank you once again for this hearing, and I yield back.

Chairman OWENS. Thank you so much. I would like to now recognize Mr. Good.

Mr. GOOD. Thank you Chairman Owens, again thank you to our witnesses for being here today. This challenge of the suppression of the free exchange of ideas on campuses, the toleration, that is an interesting word, for freedom of speech on campuses, is a relatively new phenomena.

It is about maybe 30 years old. It does seem to come almost exclusively from the left and the suppression of free speech on the right of the more conservative side. It is ironic because it used to be that it was the left, it was the liberals that they used to call themselves, who were the ones who had a terribly strong and in a positive way, commitment to free speech, free expression of ideas.

The old saying of you know I may disagree with what you have to say, but I will fight to the death for your right to say it. That is sadly long gone on our college campuses. Mr. Joner, a study from the Foundation of Individual Rights and Expression found that over 16 percent of students on college campuses think that shouting down a speaker is an acceptable tactic, to stop a campus speech.

20 percent in the study said they consider it acceptable for people to use violence to stop certain speech. I personally experienced resistance to my right to free speech when invited to speak to a group of law school students at the most prominent law school in my district recently.

Mr. Joner, based on your experience, would you say that most of the students on campus that you interact with, whether it is at Stanford or other places, do they truly understand what it means to have the right to free speech?

Mr. JONER. I do not think that the average student majority of the students really understand what this, you know, principle of free speech means, and we are not seeing it clearly communicated at the university, or taught.

Stanford's orientation, which is a week before for all freshman, you have 2000 students, a week long of seminars, there is no discussion on free speech. I cannot recall anything I learned in there, and so we are not seeing that, but we are seeing discussion on many of these other topics, like diversity, equity, inclusion.

Mr. GOOD. At universities, and obviously Stanford is a highly esteemed university, that what we are supposed to be teaching students how to think, how to reason, how to persuade ideas and thought, and viewpoints, should hold up to the challenges of scru-

tiny and debate and so forth, and that is so absent on many of our campuses. How would you think we could address this?

How do you think this can be addressed, free speech, or the lack therefore on college campuses?

Mr. JONER. Yes. Well, first off it is these incidents that we have seen across the country that are destroying this debate in the classroom, because students are too scared to speak up, and they know that if they say something the university administration is going to come after them.

What we need are these university officials to truly uphold these principles, and in the future, demonstrate that we are not going to be in a cyclical cycle of this fallout, this incident where a speaker is shouted down, and then they apologize.

Then months later, or years later, the same thing is going to happen again. That is only contributing to the cycle in this culture that is destroying free speech, and we need these university administrators who stand up for this, and stand up for it once and for all and firmly.

Mr. GOOD. Yes. It is not just happening on a micro level with university policies that are retaliatory toward free speech, but also we get reports on a micro level where students will tell us that they have to change what they—how they—their academic content, what they write on papers and so forth, because they are told by professors if you express a conservative worldview, you are going to get a bad grade.

Numerous students have told me that personally. Mr. Shapiro, Stanford, not to pick on Mr. Joner, but published a list of words recently deemed harmful language that is racist, violent or biased, and some of those words in what Stanford published were American, freshman, she and so forth. Even the term trigger warning was deemed to be too triggering. Free speech zones have been implemented at universities across the country, which effectively, as you know, prohibit free speech anywhere outside that zone, and often come with requirements that you have to register to use the space.

Could you comment on the impact that that has, these kinds of things have on the ability to learn when commonplace terms, common terms that we all would use are deemed politically incorrect, or prohibited on a college campus?

Mr. SHAPIRO. Yes. I have also seen, whether on that Stanford list or elsewhere, that merit, excellence, academic rigor—these are forbidden things—logic, reason, it is bizarre. You cannot have an institution of higher education if those things are forbidden. With respect to free speech zones, I actually encountered this when people were protesting me. At least I later learned they were protesting me a few weeks ago at the University of Denver, which is a private institution out there.

The Dean, I think they just did not want to make national headlines like Stanford has made, and that is a good goal for them to do, but they went overboard by shunting anybody who wanted to protest into these zones where I did not even see them, and then not allowing signs that were disruptive at all.

Look, I believe strongly in the right to protest, but there is a difference between protest and disruption, time, place, and manner

regulations, so you do not violate the fire code, all of these things like this. I think maximal speech is great, whether I agree with it, or anybody else.

Mr. GOOD. We are sorry that you were victimized for expressing your viewpoint. It is interesting on a college campus you are unqualified to be on a college campus. If you were to define a woman, but you are qualified apparently to go to the Supreme Court if you can not define what a woman is.

Mr. SHAPIRO. My event in Denver was on the importance of free speech on college campuses.

Mr. GOOD. Amazing. Thank you, Mr. Chairman, I yield back.

Chairman OWENS. Thank you.

Mr. Walberg.

Mr. WALBERG. Thank you, Mr. Chairman, and thank you for allowing me to wave on to this very important committee, and very important discussion today. On campus organizations exist to help students find community and support in a very new and demanding chapter of their lives. Countless studies have shown that religious organizations, especially improve feelings of belonging, cultural awareness and academic success.

We often see universities restricting these beneficial groups from organizing, with examples from 37 states involving 93 colleges and universities, and these are just the ones that were actually reported. In 2020, the Trump administration put in place—somebody needs to protect that button there, protections for on campus religious organizations.

Last month, the Biden Department of Education announced proceedings to rescind those protections. That is why this week I reintroduced H.R. 1816, the Equal Campus Access Act. The legislation would revoke funding for any institution of higher education that denies religious student organization's recognition, funding, or any other rights that secular groups have.

I asked for nothing more than just the saneness for all the organizations. I ask for unanimous consent to include a support letter from 34 organizations for the record.

Chairman OWENS. No objection.

[The information of Mr. Walberg follows:]

March 13, 2023

The Honorable Tim Walberg  
House Committee on Education and The Workforce  
U.S. House of Representatives  
2266 Rayburn House Office Building  
Washington, DC 20515

The Honorable James Lankford  
U.S. Senate  
316 Hart Senate Office Building  
Washington, DC 20510

The Honorable Tim Scott  
U.S. Senate  
104 Hart Senate Office Building  
Washington, DC 20510

Dear Congressman Walberg, Senator Lankford, and Senator Scott:

The undersigned represent diverse beliefs regarding theology, but we agree on affirming the freedom of all students to meet on their public college campuses based upon their shared religious beliefs. The right to assemble together based on religiously informed beliefs is foundational to a free and truly pluralistic society. This right includes the ability to choose leaders who affirmatively support the distinctive religious messages and missions of their various groups.

Faith-based student organizations should not face discrimination on college campuses solely because they require their leaders to agree with their core religious beliefs. Basic religious freedom—and common sense—require that a religious group be permitted to require that its leaders agree with its religious message and mission. Unfortunately, on too many college campuses, religious student organizations are denied this essential freedom.

Because this problem is national in scope, a national solution is needed. If America is to continue to be a nation characterized by religious diversity, public university campuses must teach and model respect for diverse religious beliefs and practices.

The undersigned therefore support the language in the *Equal Campus Access Act of 2023* because it will provide critical protection for faith-based student organizations of all religious traditions. The language will ensure that such groups will be allowed to meet on campuses nationwide, providing authentic faith communities where students can find belonging, and enabling them to freely discuss, live out and share their religious ideas and values.

Respectfully,

Mark Gauthier  
Vice President for North America and Oceania  
Cru

David Nammo  
CEO and Executive Director  
Christian Legal Society

His Eminence Timothy Cardinal Dolan  
Archbishop of New York  
Chairman, Committee for Religious Liberty  
United States Conference of Catholic Bishops

Gregory L. Jao  
Executive Vice President – Communications & Mobilization  
InterVarsity Christian Fellowship/USA

Howard Slugh  
General Counsel  
Jewish Coalition for Religious Liberty

Rev. Dennis H. Holtschneider, CM  
President  
Association of Catholic Colleges and Universities

Michael St. Pierre, Ed.D.  
Executive Director  
Catholic Campus Ministry Association (CCMA)

Rev. Dr. Walter Kim  
President  
National Association of Evangelicals

Rev. Dr. Matthew C. Harrison  
President  
The Lutheran Church—Missouri Synod

Rabbi Yaakov Menken  
Managing Director  
Coalition for Jewish Values

Ismail Royer  
Director, Islam and Religious Freedom Action Team  
Religious Freedom Institute

Melissa Reid  
Director of Government Affairs  
Seventh-day Adventist Church – North American Division



Will W. Huss, Jr.  
National Coordinator  
Reformed University Fellowship

Shirley V. Hoogstra  
President  
Council for Christian Colleges & Universities (CCCU)

Penny Y. Nance  
CEO and President  
Concerned Women for America LAC

Lance Kinzer  
Director of Policy and Government Relations  
1st Amendment Partnership

Dr. Chester C. Pipkin, Jr.  
President  
ReJOYce in Jesus Campus Fellowship

Craig Miller  
President  
FOCUS

Mike Chupp, MD.  
CEO  
Christian Medical & Dental Associations

Ayman Iskander, MD, FACC, FSCAI  
Treasurer/ Co-founder  
Coptic Medical Association of North America (CMANA)

Richard Chuman  
Executive Director  
Japanese Evangelical Missionary Society/Asian American Christian Fellowship

Rebecca A. Wheeler Walston, Esq.  
General Counsel & Chief Governance Officer  
The Impact Movement, Inc.

Jon Schweppe  
Director of Policy and Government Affairs  
American Principles Project

Claire McAuliffe  
Executive Director  
Sigma Alpha Omega Christian Sorority, Inc

Brandon Worsham  
Director  
Fellowship of Christian University Students (FOCUS)

Sean McNamara  
Chief Support Officer  
Fellowship of Christian Athletes

Jeff Bennett  
Executive Director  
Kansas Family Voice

Chuck Hurley  
VP and Chief Counsel  
The FAMiLY Leader

P. George Tryfiates  
Vice President for Public Policy & Legal Affairs  
Association of Christian Schools International

Rev. N.J. L'Heureux, Jr.  
Executive Director Emeritus  
Queens Federation of Churches

Philip E. Dearborn, EdD  
President  
Association for Biblical Higher Education (ABHE)

Paul A. Long  
President & CEO  
Michigan Catholic Conference

Marvin G. Campbell  
President and U.S. Director  
U.S. Navigators

Paul W. Sherrill  
Vice President and Corporate Secretary  
Young Life

Craig L. Treptow, M.D.  
President  
Catholic Medical Association

Mr. WALBERG. We should strive to reaffirm diverse theological beliefs, and solidify religious freedom rather than encouraging discrimination. Mr. Joner, across the country we have seen student groups on campus, particularly religious and conservative groups, face challenges with recognition and hosting events.

How can we make sure all student groups are treated equally when expressing their views?

Mr. JONER. Mr. Walberg, thank you so much for the question. I am also the President of an evangelical Christian group on campus, and I appreciate your concerns there. Again, what I have said earlier is that I mean we need these individuals who are committed to this principle of free speech, but we have to have these university administrators who are hired by the university, to uphold these principles.

What we have seen is that those who are being hired, like Dean Karen Steinbeck at Stanford, we are never really committed to those principles, and if those are the people that the university is hiring, then it is a very concerning trend, and putting Dean Steinbeck on leave is a good start, but are there other administrators who are not committed to the principle of free speech?

Are there other administrators that they are going to hire in the future who are not committed to this principle of free speech? We need these universities to ensure that those who are enforcing this are going to uphold free speech neutrally for all students. What we have seen is that is currently not the case.

Mr. WALBERG. A negative thumb is not on the scale for anyone in any organization. Mr. Shapiro, in your testimony you mentioned using Federal dollars as leverage when it comes to shutting down bureaucracies that completely contradict institutional policies and our Nation's values.

How far should Congress be willing to go?

Mr. SHAPIRO. I am not an expert on contracting law, and appropriations law, so I can not get into the nitty gritty, but I think requiring adherence to the Constitution and Federal law is important, and you mentioned the importance of treating religious student organizations the same as secular ones. I would have thought that you do not even need a regulation for that. I am frankly appalled that this regulation is being rescinded.

As I mentioned to your colleague Mr. Banks a little while ago, there is a 1995 Supreme Court case called the United States—sorry, *Rosenberger vs. UVA*, which was precisely about a religious newspaper at University of Virginia that was being denied funds that were otherwise being provided to other publications.

I do not think that you even need this regulation, or frankly, further legislation to make the point. You can just say as long as you are complying with existing Supreme Court precedent, and the sense of Congress about not even religious freedom, but equal treatment of different student organizations. I think those kinds of strings are not—you do not even approach any sort of line about going too far.

Mr. WALBERG. Okay. We should not have a situation where average length of time of a civil case is 29 and a half months to complete, and that is a concern. Ms. Trump, how could leaving free speech violations up to the decisions of the courts dissuade stu-

dents from coming forward with complaints, and how do we address this issue?

Ms. TRUMP. Well as I mentioned earlier, a lot of students are actually very afraid to speak up and complain about the policies on campus because they do fear retaliation. We are a membership organization at Speech First, which means we actually are able to keep their names out of the lawsuits, which is part of the reason they are able to come to us.

I think you are right in pointing out the fact that for a student to have to try to sue their school in order to have free speech protections on campus is definitely a step too far. We should not have to let it go that far, so it really comes down to what Mr. Jones was saying earlier, in that universities need to do a check and an audit of all their policies, and see which ones they are targeting student speech with, and consider maybe rescinding those, so that they are not going to be held legally accountable in the court of law.

Additionally, they could start hiring folks, as was mentioned earlier, that actually respect the First Amendment and the free speech culture in this country.

Mr. WALBERG. Thank you. My time has expired. I yield back.

Chairman OWENS. Thank you. Mr. Kiley, you are recognized.

Mr. KILEY. Thank you, Mr. Chair for organizing today's hearing on protecting freedom of speech at the place where it is most vital, our institutions of higher learning. This really should not be a partisan issue in any way, shape or form. If there is one thing that should not be a partisan issue it should be this. We should fight about everything else, exercising our First Amendment rights, but freedom of speech itself is foundational to the character of our country.

Indeed, just a few years ago, 2017, in the California legislature, I authored a resolution affirming freedom of speech as a foundational campus value. The resolution encouraged universities across the State to adopt the gold standard, free speech statement, which is the University of Chicago, statement of free expression.

Now, this is a democrat super majority in California, and it passed our legislature unanimously. This was just in 2017. In 2016, President Barack Obama had this to say. He said there is been a trend around the country of trying to get colleges to disinvite speakers with a different point of view, or disrupt a politicians rally. Do not do that, Obama said. No matter how ridiculous or offensive you might find the things that come out of their mouths.

There will be times when you should not compromise your core values, your integrity, and you have the responsibility to speak up in the face of injustice. Listen, engage. If the other side has a point learn from them. If they are wrong, rebut them. Teach them. Beat them on the battlefield of ideas.

A few years later, we continue to see incidents like we saw just recently in California, at UC Davis, and at your university, Mr. Joner, Stanford. I understand you are the Executive Editor of the Stanford Review, is that right?

Mr. JONER. Yes, I am.

Mr. KILEY. I understand your publication has done some great work, covering the attacks on free speech that have happened on campus.

Mr. JONER. Thank you. I appreciate that.

Mr. KILEY. What I want to ask you is about what the mentality you think is of the students who created these disruptions, because these are Stanford law students presumably, very bright, and yet we saw them so flagrantly defying the admonition from former President Obama.

Not even letting someone of an opposing viewpoint speak. They seemed to think that stopping the words from being expressed was the proper response to their disagreement. How do you think it is that some of the brightest students we have in this country do not seem to understand this basic American value?

Mr. JONER. Absolutely, it is quite concerning, so thank you for the question Congressman. Stanford Law School, I believe, is currently the second ranked law school in the country. We know that these students will go on to be the next business leaders, sitting in these very chairs one day, and even at the Supreme Court, I mean these are the students that Stanford Law is graduating.

These students, and this was over 100 student protestors here, completely disrupted Judge Duncan's speech, and if you watched the video and read the details in my article, or other articles, they are holding obscene signs, heckling obscene remarks, that I would not even state here in this setting.

I do not know what has brought these students to take on this worldview that means they can just shut down someone else's speech because they disagree with them, or have said something controversial. I have said we need university administrators in place to enforce it, and we absolutely do.

We need them to educate these students on these principles, and we need these students to uphold these principles of free speech themselves, and maybe that starts early on. It should happen in college, but maybe it needs to be something that is done and is not being well done in early education.

Mr. KILEY. I think you are exactly right. I think that it starts at the primary and secondary school. Well, we need to get back to teaching civics in a real way. One thing I did find encouraging in the Dean of your university's response, Jenny Martinez, is she said that they are going to—one step the law school will take will be on the mandatory half day session for all students on the topic of freedom of speech, and the norms of the legal profession.

I think that this is a good idea. Now, it is not going to compensate for the shortcomings we see at our—at the secondary and primary level around the country, but I think that the more universities that can do something like this, not necessarily in response to you know, incidents that occur on campus, but just as a matter of your basic training, your basic orientation where you come to school, I think that that would be something of great value.

Mr. Chair, I think that would be perhaps something that we could look at as a committee, as to how we can encourage that sort of education about the importance of the First Amendment and free speech at our universities. Thank you, and I yield back.

Chairman OWENS. Thank you. As we begin to close this out, I want to thank again our witnesses for taking the time to testify before the subcommittee today. Let me just give you a quick observa-

tion. First of all thank you, for each and every one of you, for being engaged in this particular topic.

Really showing our country a way that the all American way used to be. We can respect to agree to disagree. We talk together, and eventually we figure out a way to come to that space where free speech is what we want to get to. I want to thank you for that.

Also, Mr. Joner, what I want to say is I am so impressed with someone of your age. I would have never done what you are doing right now at my age, believe me, never. It says—gives me hope that we do have remarkable young people that know how to articulate themselves, how to be courageous where you stand.

This is one of the most important things we can do. I just want to say that as we close this out. Without objection, there will be no further business, and the subcommittee now stands adjourned.

[Whereupon the subcommittee adjourned at 12:03 p.m.]

